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OVERSIGHT OF THE REHABILITATION ACT AMENDMENTS OF 1986 (P.L. 99–506), EDUCATION OF THE HANDICAPPED ACT AMENDMENTS OF 1986 (P.L. 99–457), AND HANDICAPPED CHILDREN'S PROTECTION ACT OF 1985 (P.L. 99–372)

HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REVIEWING PROGRESS MADE IN THE IMPLEMENTATION OF THE REHABILITATION ACT AMENDMENTS OF 1986, THE EDUCATION OF THE HANDICAPPED ACT AMENDMENTS OF 1986, AND THE HANDICAPPED CHILDREN'S PROTECTION ACT OF 1985

OCTOBER 8, 1987

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CONTENTS

STATEMENTS

THURSDAY, OCTOBER 8, 1987

Page

American Association for Counseling and Development, prepared statement.... 240

Bartels, Elmer, commissioner of rehabilitation, Massachusetts Rehabilitation Commission, prepared statement 214

Clark, John, president, National Association of State Directors of Special Education, Washington, DC, accompanied by Frank New, president-elect, NASDSE; Carol Berman, associate director, National Center for Clinical Infant Programs, Washington, DC, accompanied by Viki Draper, member, Interagency Coordinating Committee, State of Washington; Mary Elder, administrator, Early Childhood Intervention Program, Texas; and Reed Martin, Esquire, Advocacy, Inc., Austin, TX 117

  Prepared statments of:

    Mr. Clark 120

    Ms. Berman (with attachment) 141

    Mr. Martin 179

Consortium for Citizens with Developmental Disabilities, prepared statement.. 234

Dziedzic, Paul, president, Council of State Administrators of Vocational Rehabilitation, Washington, DC, and director, Washington Department of Services for the Blind; Robert Williams, program analyst, Association for Retarded Citizens, Washington, DC, accompanied by Tony Records; Dr. Gregg Vanderheiden, director, Trace Center, University of Wisconsin, on behalf of Association for the Advancement of Rehabilitation Technology, Washington, DC; and Eric Griffen, vice president, National Council on Independent Living, Chicago, IL 57

  Prepared statements of:

    Mr. Dziedzic 62

    Mr. Williams 75

    Dr. Vanderheiden and RESNA 86

Garland, Corinne W., DEC president, the Division of Early Childhood, prepared statement (with enclosure) 220

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah, prepared statement 4

Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts, prepared statement 6

National Rehabilitation Association, the, prepared statement 207

National Rehabilitation Counseling Association, prepared statement 229

National Council of Independent Living, prepared statement 196

Stafford, Hon. Robert T., a U.S. Senator from the State of Vermont, prepared statement 7

United Cerebal Palsy, Governmental Activities Office, prepared statement....... 200

Will Madeleine, assistant secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Washington, DC, accompanied by Dr. Tom Bellamy, Director, Office of Special Education Programs, and Charles Kolb, Deputy General Counsel, Office and Justin W. Dart, Jr., Commissioner, Rehabilitation Services Administration, U.S. Department of Education, Washington, DC 10

  Prepared statements of:

    Mrs. Will (with attachments) 15

    Mr. Dart 33

ADDITIONAL MATERIAL

Communications to: Page
Sugman, Jule, secretary, Department of Social Services, State of Washington, from, Thelma R. Struck, assistant secretary, Health and Rehabilitative Services 47

OVERSIGHT OF THE REHABILITATION ACT AMENDMENTS OF 1986 (P.L. 99-506), THE EDUCATION OF THE HANDICAPPED ACT AMENDMENTS OF 1986 (P.L. 99-457), AND THE HANDICAPPED CHILDREN'S PROTECTION ACT (P.L. 99-372)

THURSDAY, OCTOBER 8, 1987

U.S. Senate,
Subcommittee on the Handicapped,
Committee on Labor and Human Resources,
Washington, DC.

The subcommittee convened, pursuant to notice, at 9:13 a.m., in room SD-430, Dirksen Senate Office Building, Senator Tom Harkin (chairman of the subcommittee) presiding.

Present: Senators Harkin, Weicker, Cochran, and Adams.

Senator **Harkin**. The Subcommittee on the Handicapped will come to order.

There is a vote in progress right now on the Senate floor that will end in about 10 to 12 minutes. I have already voted; Senator Weicker has not. So I will defer to Senator Weicker for his opening statement, at which point he will go to vote and then return, and then I will make my opening statement.

At this time, I would like to recognize my distinguished colleague, Senator Weicker.

OPENING STATEMENT OF SENATOR WEICKER

Senator **Weicker**. Mr. Chairman, I thank you very much. I am just going to be a few minutes, and then I am going to return from the Floor, because I am most interested in the testimony we are going to hear.

I want to pay a special tribute to you and your chairmanship of this subcommittee. I honestly feel that we have not missed a beat in the transition between Republican and Democratic control of the Senate with your leadership on issues affecting people with disabilities. And I am especially glad to be a part of what is now your Committee.

We are here this morning to review the progress made by the Office of Special Education and Rehabilitative Services in implementing three important pieces of legislation enacted by Congress during the last session: the Education of the Handicapped Act Amendments, the Rehabilitation Act Amendments, and the Handicapped Children's Protection Act.

These laws are critical to ensuring that people with disabilities not only have access to education and rehabilitation services, but also that those services are state-of-the-art in quality.

The timing of this hearing is significant in that it has now been one year since these pieces of legislation were signed into law. It is therefore appropriate that we hear from the Department and individuals affected by these laws on how implementation efforts are proceeding and what obstacles, if any, have been encountered along the way.

I note that we will start with a panel consisting of Madeleine Will, the Assistant Secretary for Special Education and Rehabilitative Services, and Justin Dart, Commissioner of the Rehabilitation Services Administration—two persons, I might add, who I think do an outstanding job and for whom I have great affection and great respect.

But I would like to make one point before I begin this morning, and that is the following. The purpose of this hearing is not to assign guilt or blame for management problems within the Office of Special Education and Rehabilitative Services. Whatever management problems exist can and must be addressed in a meaningful, constructive manner. You two know, as do the other people in this room, that I can sit here with Senator Harkin and my colleagues on the subcommittee and enact the best possible disability legislation we can craft. But if the commitment is not there to implement those programs effectively, those laws are for nothing.

I have on many occasions expressed my dismay at this Administration's lack of support for disability programs as reflected in the embarrassing budget requests they insist on sending up year after year. Fortunately, Congress has consistently fought and won the battles to ensure those programs have not only continued to exist, but have grown, despite painful fiscal restraints.

And I know that despite your public stance on the President's budget, you two are committed to these programs as well. Clearly, there are no two finer advocates for people with disabilities in this administration. Whatever our differences are and will continue to be on the matter of funding of programs under your jurisdiction, I know that those decisions ultimately lie with the Secretary and the Office of Management and Budget.

What does trouble me, and it troubles me greatly, is the appearance of an Office of Special Education and Rehabilitative Services that is not working together. And I can tell you if those internal problems are not resolved in short order, it is not you or I who will suffer, but the millions of disabled Americans who look to your Department for unified leadership on these issues.

I just wanted to get that out in the open because of my affection for both of you and obviously my commitment to "our" cause—yours, Madeleine, and Justin's, and mine and Tom's. I have enough to fight, very frankly—and you know that as well as I do—in terms of the attitudes held by some in the administration. And believe me, among friends, we should all be working together.

I welcome you both, as well as the other witnesses we will be hearing from today. I might add that one of the other witnesses is Robert Williams. Robert, it is good to see you back. Robert was on my staff for many years, and I understand is one of the most effective advocates out there right now. It is good to have you here.

I am going to go vote, Mr. Chairman, and I will be right back. Thank you.

Senator HARKIN. Thank you very much.

I would also ask unanimous consent that a statement of Senator Stafford be submitted in the record at the proper point.

OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN. First, I want to welcome you all here and to thank you for coming this morning, and I apologize for starting a little late.

At the beginning of the 100th Congress, I was honored by my colleagues when they appointed me to be the chairman of this subcommittee.

Congress has delegated to me as chair and others on the subcommittee responsibility for overseeing the implementation of the Education of the Handicapped Act and the Rehabilitation Act of 1973. These laws affect millions of infants, toddlers, children, youth, and adults with disabilities.

I might also add, even though he is not here to hear it, that one of the other reasons that I decided to take the chairmanship of this subcommittee was because of my close affection and esteem for Senator Weicker. He is a close personal friend of mine; I have admired his work on this subcommittee for a long time. And I knew that I could work very closely with him in a very close relationship, both personal and on a staff level, on these issues.

I take these responsibilities seriously as do, I know, the other members of this subcommittee. Let us face it—and again I will be very frank—this is not one of those subcommittees that necessarily helps a Senator, in the States; it is not one of those subcommittees in which you deal with the powerful influences of high finance and other things around the country, but it is a subcommittee on which every person who sits on this subcommittee has an intense personal and professional interest in what happens to the handicapped of this country.

So as I say, I take these responsibilities seriously, as do the other members of this subcommittee.

People with handicaps are depending on us to ensure that their rights are upheld and that they receive the benefits to which they are entitled by our laws. None of us on this Subcommittee, and I know I speak for those of you at the table and those others who will be testifying, want to let them down.

I understand that there is substantial and general agreement within the Office of Special Education and Rehabilitative Services, the Rehabilitation Services Administration and the Office of Special Education Programs, concerning the goals of Federal policy.

I also understand that the respective heads of the three offices are lifelong advocates for persons with disabilities.

My Staff Director, however, has fully briefed me on problem areas concerning implementation of the 1986 Amendments; the management/structural issues, and other problems within the U.S.

Department of Education, that are having an adverse impact on the delivery of services to persons with disabilities.

I can tell you quite frankly that I am distressed with what I have learned, and I want to make clear my expectations. The 1986 Amendments to the Education of the Handicapped Act and the Rehabilitation Act of 1973 must be fully implemented at the Federal, State and local levels in accordance with Congressional intent.

The disagreements within the Department of Education between the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Rehabilitation Services Administration must be resolved.

Further, the representatives of the various groups within the disability community must work out differences among themselves and between themselves in the Department of Education.

As Senator Weicker has said, we have enough problems battling other things; we do not need to fight amongst ourselves, because we are all interested in the same goals.

In the past, those of us advocating for the rights of persons with disabilities have succeeded on most issues, because we have proceeded on a bipartisan, consensus basis. I want to make sure that that unity and that bipartisanship is maintained.

However, our attempts for unity must be real and meaningful; pretense will not do. If it takes sitting in a locked room for days, then that is what must happen. The adverse consequences of failure are too great.

In conducting this hearing, I plan to ask pointed questions about the implementation of the 1986 Amendments. I also plan to try to identify some solutions for resolving current policy conflicts, and I hope and trust that all of the witnesses will do the same. I do not want this to in any way appear as any kind of adversarial proceeding. But we are all grown men and women; we know that there are problems. We have to resolve these problems, because, as I said, we all, I know, want the same goals. And I believe that in a spirit of mutual concern, and in a spirit of trying to resolve these problems, I am sure we can get it done, because I believe that everyone in this room and the people who are testifying here are reasonable people, individuals, who have the best interests of the disabled at heart. I know that. I do not know these individuals personally, but I do know their backgrounds, I know what they have done, and I admire them greatly.

So I am hopeful that this hearing will flush out some of those things and perhaps get us all going in the same direction at the same time.

I would also like to ask unanimous consent at this point to insert statements by Senators Hatch, Kennedy, and Stafford into the record.

[The statements referred to follow:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

I am pleased to be here today at this oversight hearing to look at the progress being made by the Department of Education in implementing PL 99-506, the Rehabilitation Act Amendments of 1986, PL 99-457, the Education of the Handicapped Act Amendments of 1986, and PL 99-372, the Handicapped Children's Protection Act. I especially welcome the participation of Madeleine Will, Assistant Secretary of the Office of Special Education and Rehabilitative Services and Justin Dart, Commissioner of the Rehabilitative Services Administration. Both have impressive track records as advocates for persons with disabilities and deserve commendation for their efforts. I also want to acknowledge the presence of our other fine witnesses here today. Many have come great distances in order to explain the strengths and weaknesses found in our current special education and rehabilitation programs.

Because of other responsibilities I regret that I cannot attend the entire hearing. Nonetheless, I remain committed to helping persons with disabilities obtain appropriate services to allow them to become productive and independent members of society.

Last Congress, I was deeply involved in the passage of these three important pieces of legislation affecting persons with disabilities. As both the chairman of the Labor and Human Resources Committee and as a conferee on all three bills, I was deeply involved in forging the final version of the legislation eventually sent to the President. I am anxiously awaiting the implementation of the new provisions.

It has been called to my attention that there is some concern about the provision of rehabilitative services to the more severely disabled members of our society. Although this may be a problem in some parts of our Nation, I am pleased to report that Utah has a fine track record for providing services to the more severely disabled. In fact 13 different groups representing the Association for Retarded Citizens, United Cerebral Palsy, Alliance for the Mentally Ill, and other organizations representing the severely disabled sent me letters of commendation and support for services provided by the Utah Divisions of Rehabilitation Services. If persons with severe disabilities are not receiving adequate attention then maybe Utah can serve as a national model for how cooperation between agencies can enhance the delivery of services to those persons with severe handicapping conditions.

In conclusion, let me express my thanks to Senator Harkin for allowing me to be a participant at this important oversight hearing to examine the implementation of these three major disability statutes. It is my hope that this hearing will provide some positive insight into how the Federal Government can help persons with disabilities become more productive and self reliant individuals.

STATEMENT OF SENATOR EDWARD M. KENNEDY
SUBCOMMITTEE ON THE HANDICAPPED
OCTOBER 8, 1987

I WOULD LIKE TO THANK THE CHAIRMAN OF THE SUBCOMMITTEE, MR. HARKIN, FOR HOLDING THIS HEARING TODAY. THE STATUTES THAT HAVE BEEN DISCUSSED THIS MORNING REPRESENT THE CORNERSTONE OF FEDERAL EFFORTS TO ASSIST THE HANDICAPPED.

THIS CONGRESS MARKS MY TWENTY-FIFTH YEAR IN THE UNITED STATES SENATE, AND THE EFFORTS BY MY FORMER COLLEAGUES AND PRESENT COLLEAGUES IN THE AREA OF HANDICAPPED LEGISLATION ARE AMONG CONGRESS' PROUDEST ACCOMPLISHMENTS. TWENTY FIVE YEARS AGO PHYSICALLY AND MENTALLY CHALLENGED CHILDREN AND ADULTS IN OUR NATION DID NOT HAVE THE CHOICES AND OPPORTUNITIES THAT ARE OPEN TO THEM TODAY. DUE IN LARGE PART TO THE EFFORTS OF THE FEDERAL GOVERNMENT, THOSE INDIVIDUALS TODAY CAN OBTAIN JOBS, AN EDUCATION, AND A HOST OF OTHER OPTIONS NOT OPEN TO THEM IN THE EARLY 1960'S.

BUT WHILE MUCH HAS BEEN ACCOMPLISHED, WE STILL HAVE MUCH MORE TO DO TO ENSURE THAT OUR NATION'S DISABLED CITIZENS ARE AFFORDED THEIR FULL RIGHTS AND OPPORTUNITIES OF CITIZENS OF THE UNITED STATES. THE VOCATIONAL REHABILITATION ACT, THE EDUCATION FOR THE HANDICAPPED ACT AND THE HANDICAPPED CHILDREN'S PROTECTION ACT REPRESENT THE BEST POSSIBLE BASE TO EXPAND ON OUR EFFORTS ON TO ASSIST DISABLED.

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK THOSE WHO TESTIFIED BEFORE THE SUBCOMMITTEE TODAY. IT IS IN LARGE PART DUE TO YOUR TREMENDOUS EFFORTS THAT WE AS A NATION HAVE MADE PROGRESS IN THIS FIELD. I AM HOPEFUL THAT THE UNITED STATES CONGRESS CAN CONTINUE TO WORK HAND-IN-HAND WITH THE EXECUTIVE BRANCH TO IMPLEMENT THESE PROGRAMS IN A FAIR AND EFFECTIVE MANNER.

THANK YOU MR. CHAIRMAN.

STATEMENT BY SENATOR ROBERT T. STAFFORD
SUBCOMMITTEE ON THE HANDICAPPED HEARING ON "IMPLEMENTATION OF 1986 AMENDMENTS TO THE REHABILITATION ACT AND THE EDUCATION OF THE HANDICAPPED ACT".

THURSDAY, OCTOBER 9, 1987

MR. CHAIRMAN: LET ME BEGIN BY COMMENDING YOU ON YOUR LEADERSHIP IN CONVENING THIS IMPORTANT OVERSIGHT HEARING ON RECENT AMENDMENTS TO THE REHABILITATION ACT AND THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT. THE SUBCOMMITTEE ON THE HANDICAPPED WAS VERY PRODUCTIVE DURING THE LAST CONGRESS. SERVICES TO DISABLED CHILDREN AND ADULTS WERE EXPANDED BY THE INCLUSION OF NEW INITIATIVES IN THE AREAS OF SUPPORTED EMPLOYMENT, PRESCHOOL PROGRAMS FOR HANDICAPPED TODDLERS, AND EARLY INTERVENTION SERVICES FOR INFANTS FROM BIRTH. FURTHERMORE, PASSAGE OF THE ATTORNEY'S FEE BILL PUT REAL TEETH IN THE FEDERAL GOVERNMENT'S PROMISE TO MAKE A FREE, APPROPRIATE PUBLIC EDUCATION AVAILABLE TO ALL HANDICAPPED SCHOOL CHILDREN.

IMPLEMENTATION OF THESE VITAL INITIATIVES IS A TASK THAT OUR FIRST WITNESS, MRS. MADELEINE WILL, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES, HAS WORKED HARD TO CARRY OUT. AS A STRONG AND VOCAL ADVOCATE FOR DISABLED INDIVIDUALS SHE HAS BEEN A SPOKESPERSON WITHIN THE ADMINISTRATION FOR THE

EXPANSION OF SUPPORTED WORK OPPORTUNITIES. SIMILARLY, MRS. WILL KNOWS FIRST HAND HOW IMPORTANT IT IS TO INTERVENE AT THE EARLIEST POSSIBLE MOMENT TO ASSIST HANDICAPPED INFANTS AND THEIR FAMILIES. IN WELCOMING MRS. WILL HERE TODAY, I WOULD LIKE TO COMMEND AND THANK HER FOR HER ADVOCACY ON BEHALF OF HANDICAPPED PEOPLE OF ALL AGES. I CANNOT SAY IT BETTER THAN A GENTLEMAN FROM ASHLAND, VIRGINIA WHO WROTE TO ME THIS PAST WEEK TO SAY:

> "SINCE MRS. WILL HAS BEEN IN CHARGE...THERE HAVE BEEN MORE POSITIVE STRIDES FOR HANDICAPPED PERSONS THAN WE HAVE SEEN IN TWO DECADES. I FIND IN MY WORK, THAT THOSE PEOPLE WHO REALLY ADMIRE YOUR FEDERAL INITIATIVES IN THIS AREA ARE PARENTS, PROFESSIONALS, SERVICE PROVIDERS AND TEACHERS AT THE LOCAL LEVEL, ADVOCATES, AND HANDICAPPED PEOPLE THEMSELVES. IN SHORT, THOSE WHO ARE CLOSEST TO PEOPLE WITH DISABILITIES ON A DAILY BASIS TEND TO SUPPORT THE INITIATIVES ON INTREGRATION, SUPPORTED EMPLOYMENT, TRANSITION AND ARE AMONG MADELEINE WILL'S STAUNCHEST SUPPORTERS... SHE IS A TRUE ADVOCATE."

OUR SECOND WITNESS THIS MORNING, MR. JUSTIN DART,JR., COMMISSIONER OF THE REHABILITATION SERVICES ADMINISTRATION, DESERVES SIMILAR PRAISE. MR. DART, AS WE ALL KNOW, HAS WORKED DILIGENTLY ON IMPLEMENTING THE REHABILITATION ACT TO ENSURE THE GREATEST NUMBER OF INDIVIDUALS WITH DISABILITIES RECEIVE THE NECESSARY SERVICES TO ASSIST THEM IN BECOMING PRODUCTIVE CITIZENS WITHIN THEIR

COMMUNITIES. COMMISSIONER DART HAS TRAVELED TO EVERY STATE PROVIDING ASSISTANCE AND A LISTENING EAR TO DISABLED CONSUMERS, AND TO THE PROVIDERS OF THESE SPECIALIZED SERVICES.

BOTH MRS. WILL AND MR. DART ARE TO BE COMMENDED ON THEIR LONG STANDING AND DILIGENT ADVOCACY FOR PROGRAMS TO SERVE THE DISABLED CITIZENS OF THIS COUNTRY.

IN MY OWN STATE OF VERMONT, HANDICAPPED PEOPLE HAVE MADE GREAT STRIDES IN THE PAST FIVE YEARS. PROGRAMS FOR INFANTS WITH DISABILITIES HAVE IMPROVED AND EXPANDED. PRESCHOOL EDUCATION FOR HANDICAPPED CHILDREN THREE TO FIVE WILL SOON BE A REALITY FOR ALL VERMONT RESIDENTS. AND FINALLY, THE MOST SEVERELY DISABLED VERMONTERS ARE NOW EMPLOYEES IN WORK PLACES THROUGHOUT THE STATE. IN SHORT, OUR FEDERAL INITIATIVES ARE WORKING.

Senator HARKIN. I now recognize the distinguished Senator from Mississippi, Senator Cochran.

Senator COCHRAN. Thank you very much, Mr. Chairman.

I want to congratulate you, Mr. Chairman, and compliment you for scheduling these hearings. It is a subject that is very important in my State. Mississippi has the highest percentage of disabled citizens of any State in the Union. We have one of the highest percentages of severely disabled. So, this is a matter that is of great concern in our State, how to deal more effectively with the challenges of rehabilitation, vocational needs, and generally improving the opportunities for a better life for those who are disabled.

So I am very glad to be here this morning and to have our witnesses here. I look forward to their testimony, and in helping to try to figure out how to better deal with this problem that confronts our country.

Thank you.

Senator HARKIN. Thank you, Senator Cochran. And again I want to thank you for your attention and your input into this subcommittee and that of your staff. It has been meaningful, and I appreciate it very much.

Without further ado, we will turn to our witnesses this morning and welcome you back to the Subcommittee.

As I said, this is an oversight hearing on the implementation of the Rehabilitation Act Amendments of 1986, the Education of the Handicapped Act Amendments of 1986, and the Handicapped Children's Protection Act.

In our first panel, we have Assistant Secretary Madeleine Will, of the Office of Special Education and Rehabilitative Services; and Mr. Justin W. Dart, Jr., Commissioner of Rehabilitation Services Administration.

At this point, I would recognize Secretary Will. I welcome you back to the Subcommittee and ask you to proceed as you so desire.

STATEMENT OF MADELEINE WILL, ASSISTANT SECRETARY, OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC, ACCOMPANIED BY DR. TOM BELLAMY, DIRECTOR, OFFICE OF SPECIAL EDUCATION PROGRAMS, AND CHARLES KOLB, DEPUTY GENERAL COUNSEL OFFICE, AND JUSTIN W. DART, JR., COMMISSIONER, REHABILITATION SERVICES ADMINISTRATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC

Mrs. WILL. Thank you. Good morning, Senator.

I am pleased to report today on the progress the Office of Special Education and Rehabilitative Services has made in the implementation of the Education of the Handicapped Act Amendments of 1986 and the Rehabilitation Act Amendments of 1986.

In reauthorizing these important statutes, Congress has reaffirmed the commitment of our Nation to the rights and progress of disabled individuals. The passage of this legislation also advances significantly the goal of increasing the independence of handicapped individuals through the creation of new programs such as supported employment.

I believe that task for the future remains to proceed with a strong commitment to assure the success of these programs. I am prepared to provide the leadership to achieve this success and will report today on our activities.

Despite a Department request that the reauthorization for the EHA and the Rehabilitation Act be staggered, in consecutive years, Congress decided to reauthorize both the EHA and the Rehabilitation Act simultaneously. In doing so, Congress not only significantly revised existing programs, but also created three entirely new programs. As a result, OSERS faced an unusually large workload during the period immediately following passage of the acts.

I would like to present a few statistics on overall OSERS performance in implementing the reauthorizations of the two statutes. I believe these facts reflect the dedication of OSERS staff and their willingness to work effectively and cooperatively under the pressures created by this large workload.

Moreover, when considered in light of the Department's overall workload last year, OSERS 'performance has been commendable.

To implement the reauthorizations and establish program priorities for fiscal year 1987 discretionary grants, OSERS produced 40 regulatory documents during the past year. To date, 29 have been published, as shown in the accompanying chart, which will be distributed to you if it has not already happened. The number published represents one-third of all Department regulatory documents for the entire Department of Education in the same period and 50 percent of the workload of all other Department agencies combined. These other agencies published only 58 regulatory documents in this period.

Also, OSERS in this period produced an additional 22 regulatory documents related to fiscal year 1988 funding priorities which was considerably in advance of prior year schedules.

Given this workload, we adopted a priority system which gave precedence to the publication of documents needed for fiscal year 1987 funding. This accounts for the fact that some regulations related to the 1986 amendments are not yet published. I am working to assure these remaining regulatory documents will all be published in the next few months.

In addition to regulatory documents, OSERS funded about 1,900 grants in fiscal year 1987. This figure represents 25 percent of the grants awarded by the entire Department. No funds were lapsed for failure to complete competitions or make awards.

It should also be explained that in fiscal year 1987, OSERS implemented and made awards under three new formula grant programs, which required the development of new application packages and review procedures.

OSERS conducted 80 monitoring and technical assistance visits to State agencies under its special education and rehabilitation formula grant programs in fiscal year 1987. These trips consumed 70 percent of the total OSERS travel budget.

Now, I will briefly address the progress made in implementing three new programs created by this legislation, including some comments on major issues that have arisen during implementation of these amendments. In the infants and toddlers program, by September 30, 51 States and Insular Areas received first-year grant awards, while seven States and the Bureau of Indian Affairs received contingency awards subject to compliance with Part H public comment requirements. When we receive documentation that these requirements have been met, final awards will be issued to these States and BIA. Regulations for this program are currently at OMB and now awaiting clearance.

For the preschool program, to date, 57 States and Insular Areas have received awards under this forward-funded program. The remaining two States will receive their awards when their part B plans are approved. I might note that the number of grants awarded by September 30 this year was greater than the number made in past years by this date. The regulations for this new program are at OMB for clearance.

For supported employment State grants because of the newness of the supported employment concept, I determined it was critical to provide the States regulatory guidance in order to ensure effective and consistent implementation of the new supported employment program. I am pleased to report we were able to complete final regulations in time to govern fiscal year 1987 awards. This was accomplished despite having to analyze and respond to over 400 comments on the proposed regulations. The regulations were published in final on August 14, and awards were made to all State agencies when the regulations finally became effective on September 29.

I believe the regulations will provide needed guidance to States as they implement the program. However, I remain concerned about complaints from the States regarding the high priority I have given supported employment, and I question the extent of their commitment to the successful implementation of the program.

For example, OSERS recently organized a national training session to provide technical assistance to the States. No State vocational rehabilitation agencies agreed to participate.

Concerning engineering, amendments were made in both statutes which increase the role and emphasis on the use of engineering technology. I have created an OSERS-wide cross-cutting task force to develop guidance for all OSERS programs in this area. Some 11 major organizations are represented on this task force.

I do note, however, that the State vocational rehabilitation agencies, as in the case of training on supported employment, have chosen not to participate.

Before I conclude, I would like to advise the committee on one additional issue vital to the successful implementation of all OSERS programs.

When OSERS was created by Congress in connection with the establishment of the Department of Education, little attention was paid to the basic structure of the organization.

Three previously autonomous units—the Bureau for the Education of the Handicapped, now OSEP; the Rehabilitation Services Administration, RSA; and the National Institute for Handicapped Research, NIHR now NIDHR—were placed under a single Assistant Secretary. Such an arrangement makes abundant sense when viewed from the consumer perspective.

Indeed, a major problem now plaguing disabled Americans and their families is the fragmentation of the adult service system and the lack of effective coordination with elementary and secondary education programs.

During my 4 years in OSERS, I have concluded that despite the wisdom of the original decision, additional changes must be made to transform what is still an administrative grouping of discrete and relatively uncoordinated agencies and programs. Proximity on an organizational chart and in office locations have in fact not resulted in the degree of program coordination and integration desired.

Despite a common line of authority and supervision, the programs remain essentially separate ventures, targeted toward the same clientele.

During my tenure in OSERS, I have attempted repeatedly to use supervisory authority to better coordinate and integrate these separate program areas. While some improvements in communication and even coordination have resulted, I am now convinced that at the Federal level, effective program integration—effective in terms of successfully supporting the maximum development of economic self-sufficiency, personal autonomy and social integration of disabled persons—can only be accomplished through strong administrative leadership is combined with major structural change and innovation within OSERS.

During my tenure, I have also observed the problems for effective and coordinated service delivery posed by similar organizational autonomy at the State level. In half the States the special education and vocational rehabilitation programs are not under a common supervisor, and program fragmentation at the Federal level has been too often mirrored at the State level.

In light of these problems, during the next 6 months, I will be preparing a report to the Secretary, assessing the organizational problems created by the current structure of OSERS and recommending specific changes in the present arrangements designed to support continuous and effective program integration at the service delivery level. The goal of this activity will be to answer the question: What organizational and structural arrangements within OSERS would maximize the effectiveness of the federally supported, educational, habilitative, employment and community support services provided to disabled persons and their families?

While I have just begun this management and program development initiative, I believe it is quite likely that the answer to this question will involve some changes in both the statutory and regulatory structures of current programs as well as new administrative arrangements.

In the preparation of this study, I have requested and anticipate receiving a pledge of close cooperation from the Council of Chief State School Officers. In many States, the Chief State School Officer has parallel supervisory authority over the OSERS programs at the State level. In this collaborative effort, I anticipate that the Chiefs will not only contribute invaluable assistance to the internal OSERS effort by providing constructive and cross-cutting insight into current program operations at the State and local levels, but will also develop recommendations for parallel and complementary changes in program structure and administrative arrangements at the State level.

In order to ensure the broadest possible exchange of ideas, I am establishing a working group composed of representatives from within each of the OSERS major divisions and from a variety of current service providers and interested consumer and professional organizations who will participate directly in the formulation of the report.

As currently envisioned, the study will address program coordination and integration in all areas, including eligibility determination and needs assessment, service planning and delivery, case management, parent involvement and client self-advocacy, and program evaluation and monitoring.

Current program improvement initiatives in each of the major OSERS units will, of course, continue during the preparation of this report. While I will undoubtedly not benefit directly as the OSERS Assistant Secretary from the changes which will come about as the result of this study and report, as an advocate for disabled persons and as a parent of a disabled child, I am excited by the prospect of accomplishing long-lasting improvements in program structure for disabled Americans and their families.

I will be pleased to answer questions from the Committee.

Senator HARKIN. Thank you very much, Madame Secretary.

[The prepared statement of Mrs. Will (with attachments), follows:]

STATEMENT OF MADELEINE C. WILL
ASSISTANT SECRETARY FOR SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
U.S. DEPARTMENT OF EDUCATION
ON THE
REHABILITATION ACT OF 1973
AND
EDUCATION OF THE HANDICAPPED ACT

BEFORE THE
SUBCOMMITTEE ON THE HANDICAPPED
UNITED STATES SENATE

OCTOBER 8, 1987

I am pleased to report today on the progress the Office of Special Education and Rehabilitative Services has made in the implementation of the Education of the Handicapped Act Amendments of 1986 (EHA), (P.L. 99-457) and the Rehabilitation Act Amendments of 1986.

In reauthorizing these important statutes, Congress has reaffirmed the commitment of our nation to the rights and progress of disabled individuals. The passage of this legislation also advances significantly the goal of increasing the independence of handicapped individuals through the creation of new programs such as supported employment. I believe that task for the future remains to proceed with a strong commitment to assure the success of these programs. I am prepared to provide the leadership to achieve this success and will report today on our activities.

Despite a Department request that the reauthorization for the EHA and the Rehabilitation Act be staggered, in consecutive years, Congress decided to reauthorize both the EHA and the Rehabilitation Act simultaneously. In doing so, Congress not only significantly revised existing programs but also created three entirely new programs. As a result, OSERS faced an unusually large workload during the period immediately following passage of the Acts.

Management

I would like to present a few statistics on overall OSERS performance in implementing the reauthorizations of the two statutes. I believe these facts reflect the dedication of OSERS staff and their willingness to work effectively and cooperatively under the pressures created by this large workload. Moreover, when considered in light of the Department's overall workload last year, OSERS performance has been commendable.

- To implement the reauthorizations and establish program priorities for FY 1987 discretionary grants, OSERS produced 40 regulatory documents during the past year. To date 29 have been published as shown in the accompanying chart. The number published represents one-third of all Department regulatory documents for the entire Department of Education in the same period and 50 percent of the workload of all other Department agencies combined. These other agencies published only 58 regulatory documents in this period. Also, OSERS in this period produced an additional 22 regulatory documents related to FY 1988 funding priorities which was considerably in advance of prior year schedules. Given this workload, we adopted a priority system which gave precedence to the publication of documents needed for fiscal year funding. This accounts for the fact that some regulations related to the 1986 amendments are not yet published. I am working to assure these remaining regulatory documents will all be published in the next few months.

- In addition to regulatory documents, OSERS funded about 1,900 grants in FY 1987. This figure represents 25 percent of the grants awarded by the entire Department. No funds were lapsed for failure to complete competitions or make awards.

- It should also be explained that in FY 1987 OSERS implemented and made awards under three new formula grant programs, which required the development of new application packages and review procedures.

- OSERS conducted 80 monitoring and technical assistance visits to State agencies under its special education and rehabilitation formula grant programs in FY 1987. These trips consumed 70 percent of the total OSERS travel budget.

Now I will briefly address the progress made in implementing three new programs created by this legislation, including some comments on major issues that have arisen during implementation of these amendments.

Grants for Infants and Families

By September 30, 51 States and Insular Areas received first year grant awards under this program while 7 States and the Bureau of Indian Affairs (BIA) received contingency awards subject to compliance with Part H public comment requirements. When we receive documentation that these requirements have been met, final awards will be issued to these States and BIA. Regulations for this program are currently at OMB and now awaiting clearance.

Preschool

To date, 57 States and Insular Areas have received awards under this forward-funded program. The remaining two States will receive their awards when their Part B plans are approved. I might note that the number of grants awarded by September 30 this year was greater than the number made in past years by this date. The regulations for this new program are at OMB for clearance.

Supported Employment State Grants

Because of the newness of the supported employment concept, I determined it was critical to provide the States regulatory guidance in order to ensure effective and consistent implementation of the new supported employment program. I am pleased to report we were able to complete final regulations in time to govern fiscal year 1987 awards. This was accomplished despite having to analyze and respond to over 400 comments on the proposed regulations. The regulations were published in final on August 14, and awards were made to all State agencies when the regulations finally became effective on September 29.

I believe the regulations will provide needed guidance to States as they implement the program. However, I remain concerned about complaints from the states regarding the high priority I have given supported employment and I question the extent of their commitment to the successful implementation of the program. For example, OSERS recently organized a national training session to provide technical assistance to the states. No state agencies agreed to participate.

Engineering

Amendments were made in both statutes which increase the role and emphasis on the use of engineering technology. I have created an OSERS-wide cross-cutting task force to develop guidance for all OSERS programs in this area. Some 11 major organizations are represented on this task force. I do note, however, that the State vocational rehabilitation agencies, as in the case of training on supported employment, have chosen not to participate.

Before I conclude, I would like to advise the Committee on one additional issue vital to the successful implementation of all OSERS programs.

When OSERS was created by Congress in connection with the establishment of the Department of Education, little attention was paid to the basic structure of the organization. Three previously autonomous units, the Bureau for the Education of the Handicapped (now OSEP), the Rehabilitation Services Administration and the National Institute for Handicapped Research were placed under a single Assistant Secretary. Such an arrangement makes abundant sense when viewed from the consumer perspective. Indeed, a major problem now plaguing disabled Americans and their families is the fragmentation of the adult service system and the lack of effective coordination with elementary and secondary education programs.

During my four years in OSERS, I have concluded that despite the wisdom of the original decision, additional changes must be made to transform what is still an administrative grouping of discrete and relatively uncoordinated agencies and programs. Proximity on an organizational chart and in office location have, in fact, not resulted in the degree of program coordination and integration desired. Despite a common line of authority and supervision, the programs remain essentially separate ventures, targeted toward the same clientele.

During my tenure in OSERS I have attempted repeatedly to use supervisory authority to better coordinate and integrate these separate programs areas. While some improvements in communication and even coordination have resulted, I am now convinced that, at the Federal level, effective program integration -- effective in terms of successfully supporting the maximum development of economic self-sufficiency, personal autonomy and social integration of disabled persons -- can only be accomplished if strong administrative leadership is combined with major structural change and innovation within OSERS.

During my tenure I have also observed the problems for effective and coordinated service delivery posed by similar organizational autonomy at the State level. In half the States the special education and vocational rehabilitation programs are not under a common supervisor and program fragmentation at the Federal level has been too often mirrored at the State level.

In light of these problems, during the next six months I will be preparing a report to the Secretary assessing the organizational problems created by the current structure of OSERS and recommending specific changes in the present arrangements designed to support continuous and effective program integration at the service delivery level. The goal of this activity will be to answer the question: what organizational and structural arrangements within OSERS would maximize the effectiveness of the Federally supported educational, habilitative, employment and community support services provided to disabled persons and their families? While I have just begun this management and program development initiative, I believe it is quite likely that the answer to this question will involve some changes in both the statutory and regulatory structures of current programs as well as new administrative arrangements.

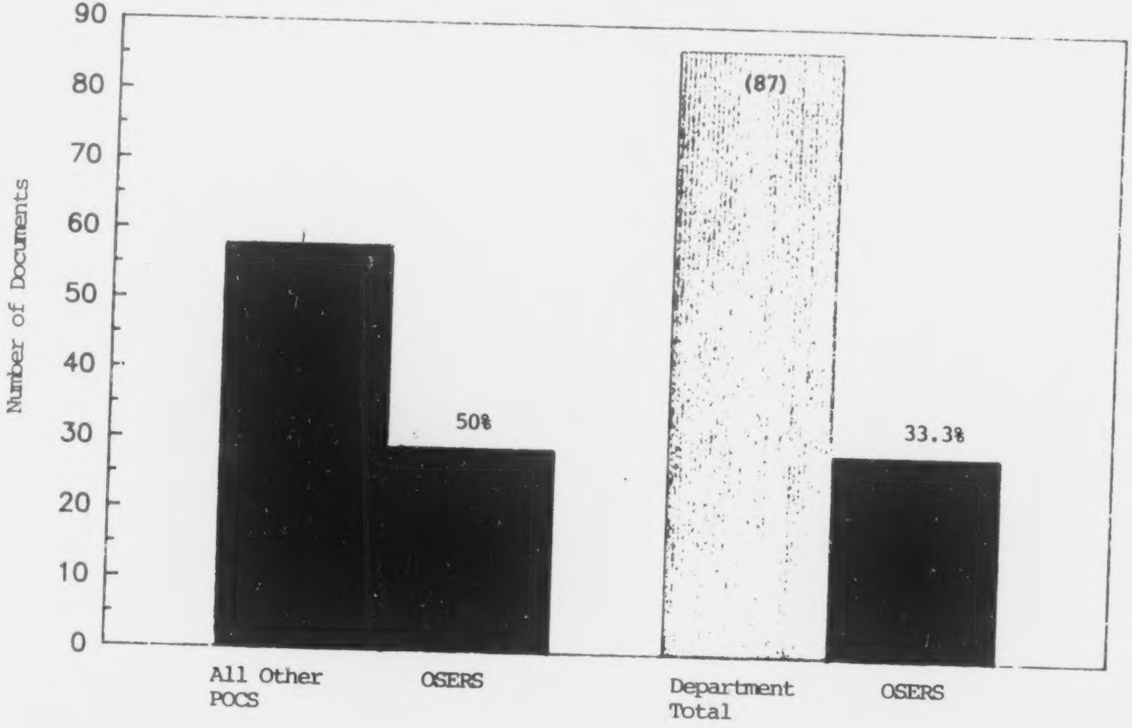
In the preparation of this study I have requested and anticipate receiving a pledge of close cooperation from the Council of Chief State School Officers (CCSSO). In many States the Chief State School Officer has parallel supervisory authority over the OSERS programs at the State level. In this collaborative effort, I anticipate that CCSSO will not only contribute invaluable assistance to the internal OSERS effort by providing constructive and crosscutting insight into current program operations at the State and local levels, but will also develop recommendations for parallel and complimentary changes in program structure and administrative arrangements at the State level.

In order to ensure the broadest possible exchange of ideas, I am establishing a working group composed of representatives from within each of OSERS major divisions and from a variety of current service providers and interested consumer and professional organizations who will participate directly in the formulation of the report. As currently envisioned, the study will address program coordination and integration in all areas including eligibility determination and needs assessment, service planning and delivery, case management, parent involvement and client self-advocacy, and program evaluation and monitoring.

Current program improvement initiatives in each of the major OSERS component units will, of course, continue during the preparation of this report. While I will undoubtedly not benefit directly as the OSERS Assistant Secretary from the changes which will come about as the result of this study and report, as an advocate for disabled persons and as a parent of a disabled child I am excited by the prospects of accomplishing long lasting improvements in program structure for disabled Americans and their families.

I will be pleased to answer questions from the Committee.

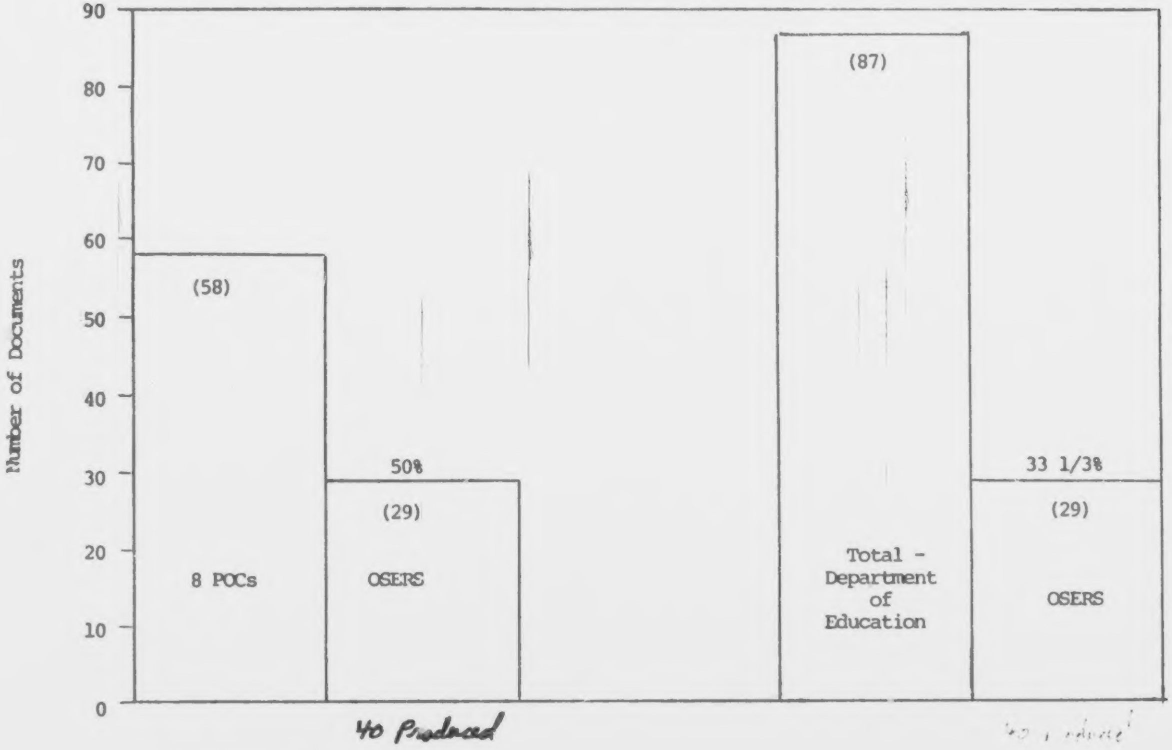
Number and Percent of One-Time Regulatory Documents Published in FY 1987 By OSERS, Other POCs* and the Department



*Principal Operating Component

ATTACHMENT A

Number and Percent of All Regulatory Documents Published in FY'87 by OSERS By Total of All Other POCs* and By Total for the Department



* Principal Operating Components

Attachment B

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

JUN 26 1987

Honorable Edward M. Kennedy
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In my letter of December 5, 1986, I notified you of the expected publication dates for final regulations needed to implement the Education of the Handicapped Act Amendments of 1986 (P.L. 99-457, enacted October 8, 1986). Due to circumstances unforeseen at the time of the letter, I am notifying you, in accordance with section 431(g) of the General Education Provisions Act, that I find it necessary to revise the expected publication dates according to the enclosed schedule. Upon further consideration, it has been determined that regulations will not be required for Educational Media Research, Production, Distribution, and Training under the new legislation. Final regulations for Postsecondary Education Programs for Handicapped Persons were published on March 2, 1987. Proposed regulations for the Clearinghouses for the Handicapped Program were published on April 28, 1987; for the Program for Severely Handicapped Children on May 11, 1987; and for the Handicapped Children's Early Education Program on May 13, 1987.

The Department has had to revise its schedule for publication of regulations due to the unusually heavy workload caused by the large volume of regulatory revisions needed to implement this Act and other recent legislation, including the Human Services Reauthorization Act of 1986, the Higher Education Amendments of 1986, the Rehabilitation Act Amendments of 1986, and the Drug-Free Schools and Communities Act of 1986.

Sincerely,

William J. Bennett

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

SCHEDULE FOR PUBLICATION OF

FINAL REGULATIONS

Education of the Handicapped Act
Amendments of 1986
Public Law 99-457

Program Title	Publication Date
Assistance to States for Education of Handicapped Children (includes amendment under Public Law 99-362)	2/11/88
Preschool Grants	12/31/87
Handicapped Infants and Toddlers	12/31/87
Removal of Architectural Barriers	2/29/88
Regional Resource Centers	2/29/88
Services for Deaf-Blind Children and Youth	2/1/88
Handicapped Children's Early Education Program	7/31/87
Program for Severely Handicapped Children	7/31/87
Training Personnel for the Education of the Handicapped -- Parent Training and Information Centers; General; and Special Projects	12/31/87
Training Personnel for the Education of the Handicapped -- Grants to State Educational Agencies for Traineeships	7/31/87
Clearinghouses for the Handicapped Program	7/31/87
Research in Education of the Handicapped Program	3/31/88
Secondary Education and Transitional Services for Handicapped Youth	2/29/88
Handicapped Special Studies Program	2/29/88
Educational Media Loan Services for the Handicapped and Captioned Films Loan Services for the Deaf	2/29/88
Technology, Educational Media, and Materials for the Handicapped	2/1/88

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

JUN 26 1987

Honorable Edward M. Kennedy
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In my letter of December 19, 1986, I notified you of the expected publication dates for final regulations needed to implement the Rehabilitation Act Amendments of 1986 (P.L. 99-506, enacted October 21, 1986). Due to circumstances unforeseen at the time of the letter, I am notifying you, in accordance with section 431(g) of the General Education Provisions Act, that I find it necessary to revise the expected publication dates according to the enclosed schedule. Proposed regulations for the National Institute on Disability and Rehabilitation Research Amendments were published on May 7, 1987, and for the State Supported Employment Services Program and Projects for Handicapped American Indians and Long-Term Training Vocational Rehabilitation Service Projects on May 27, 1987.

The Department has had to revise its schedule for publication of regulations due to the unusually heavy workload caused by the large volume of regulatory revisions needed to implement this Act and other recent legislation, including the Human Services Reauthorization Act of 1986, the Higher Education Amendments of 1986, the Education of the Handicapped Act Amendments of 1986, and the Drug-Free Schools and Communities Act of 1986.

Sincerely,

William J. Bennett

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

SCHEDULE FOR PUBLICATION OF FINAL REGULATIONS

Rehabilitation Act Amendments of 1986

Public Law 99-506

Program Title	Publication Date
Rehabilitation Act Technical Amendments	9/30/87
State Vocational Rehabilitation Services Program	12/30/87
Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Handicaps (formerly Special Projects and Demonstrations for Providing Transitional Rehabilitation Services and Transitional Planning Grants)	2/29/88
Independent Living Services for Older Blind Individuals	2/29/88
Projects for Handicapped American Indians and Long-Term Training Vocational Rehabilitation Service Projects (formerly Handicapped Long-Term Training Program and Handicapped American Indian Vocational Rehabilitation Service Projects)	7/31/87
State Supported Employment Services Program (formerly part of Vocational rehabilitation services to severely handicapped individuals, including supported employment programs under Title VI-C and section 311 of the Act)	7/31/87
Special Projects and Demonstrations--Supported Employment (formerly part of Vocational rehabilitation services to severely handicapped individuals, including supported employment programs under Title VI-C and section 311 of the Act)	2/1/88
National Institute on Disability and Rehabilitation Research - Amendments (formerly Rehabilitation Research and Training Centers and Rehabilitation Engineering Program)	7/31/87
Handicapped Research: Research Training and Career Development (formerly Handicapped Research (General Provisions))	1/15/88

Attachment C

U. S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202

INFORMATION MEMORANDUM
RSA-IM-88-03
October 21, 1987

TO : STATE REHABILITATION AGENCIES (GENERAL)
STATE REHABILITATION AGENCIES (BLIND)
CLIENT ASSISTANCE PROGRAMS
RSA REGIONAL COMMISSIONERS
RSA SENIOR STAFF

SUBJECT : Title VII, Part B, Centers for Independent Living

CONTENT : This memorandum is to inform all Title VII, Part B, Centers for Independent Living grantees and those centers that maintain a contractual agreement with a grantee of a new program requirement effective October 21, 1987. This requirement is that each center must have a governing board composed of a majority of individuals with handicaps.

The Department interprets this requirement of the statute based on legislative history. The provision originated in Senate Bill (S.2515) and the only report language is in the accompanying Senate Report, (No. 99-388), on page 26. The report states "that each independent living center have a board which is composed of a majority of handicapped individuals. The Committee believes it is appropriate that the principal governing body of each center be composed of a majority of handicapped individuals and that this is consistent with the fundamental principles and philosophies of independence upon which this program is based." The Department interprets the statutory reference to "board" to mean the principal governing body of a center. This interpretation will be contained in program regulations to be issued in the near future. If any grantee needs technical assistance, please contact Ms. Deidre Davis at (202) 732-1326.

Francis V Corrigan
Actg Commissioner of Rehabilitation Services

Senator HARKIN. Before we get into questions, we will turn to the Commissioner for Rehabilitation Services Administration, Mr. Justin W. Dart, Jr.

Mr. Dart, welcome to the Subcommittee, and please proceed as you so desire.

Mr. DART. Mr. Chairman, it is a privilege to appear today before a Committee composed of and staffed by individuals who have been dedicated and successful advocates for the cause of human development—-Senator Harkin, Senator Cochran, and of course, Senator Weicker, who has been the courageous champion in the Congress of more than 35 million Americans with disabilities who have no million-dollar PAC's.

I congratulate you on a truly distinguished staff of capable and dedicated advocates for human rights, including Bob Silverstein, Terry Muilenburg, Chris Button, Chris Lord, Judy Wagner, Sue Ellen Walbridge, and many others, all of whom are great friends of Americans with disabilities.

It is an honor to sit today at the table for the first time in a Senate hearing with my distinguished superior and colleague advocate, Assistant Secretary of Education Madeleine Will, who has made historic contributions to the culture, particularly through her advocacy for magnificent programs like supported employment, which I support totally.

And it is a privilege to note today the presence in the room of so many great colleague advocates for quality services, independence, and equal rights, like Frank deGeorge, Phil Caulkins, Curt Decker, Paul Marchand, Paul Dziedzic, Reed Martin, Eric Griffen, Jack Duncan, Joe Owens and many others.

I would like to say that I am deeply grateful for the opportunity that the President has given to me and to other advocates for the rights of people with disabilities to serve in his administration, because participating in the decisions of Government and society at all levels is an absolutely essential ingredient to the eventual achievement of equality.

Mr. Chairman, I congratulate you and each Member of Congress on having enacted the 1986 Amendments to the Rehabilitation Act. New and reinforced initiatives in areas such as supported employment, independent living, rehabilitation engineering, protection of the rights of people with disabilities, training, services for Native Americans, Projects with Industry, and recreation constitute a historic progress for the cause of people with severe disabilities.

Congratulations also on your continuing support of our basic vocational rehabilitation program, which has resulted in miracles in the lives of hundreds of thousands of individuals such as myself, and which has proven to be a superbly profitable investment for every citizen of this Nation, in terms of both money and quality of life.

The Rehabilitation Services Administration is dedicated to the vigorous implementation of the Amendments, as well as the basic, ongoing provisions of the Act.

Our ability to accomplish this task with maximum efficiency depends on dedication to the task and on working together with the American people toward mutual goals. Toward this end, we have taken a number of positive steps.

We have worked successfully toward opening up positive communication with people with disabilities, their families and service providers, to bring them into the consultation and implementation processes. We have begun to employ additional outstanding professional personnel, including many individuals who are highly respected advocates for the rights of people with disabilities. We have created and begun to implement a 1988 RSA work plan which deals exclusively with basic revisions of the agency's systems of management, policy, communications, program development, monitoring and technical assistance; with the creation of a comprehensive long-range plan; with a program to make RSA a model for the Nation of accessibility and human rights attitudes and of course with the implementation of the 1986 Amendments to the Rehabilitation Act.

We have quality programs, excellent resources, and great present and potential support from all segments of our society.

As a Nation, we cannot fail the millions of individuals in this and future generations who rely on us for access to life. With your ongoing guidance and support, RSA will participate with all Americans in enabling people with disabilities, no matter how severe those disabilities may be, to achieve their full potential for a life of quality.

[The prepared statment of Mr. Dart follows:]

STATEMENT OF JUSTIN DART, JR.

COMMISSIONER FOR REHABILITATION SERVICES ADMINISTRATION
U.S. DEPARTMENT OF EDUCATION

BEFORE THE
SUBCOMMITTEE ON THE HANDICAPPED
UNITED STATES SENATE

OCTOBER 8, 1987

- Mr. Chairman, it is a privilege to appear today before a committee composed of and staffed by individuals who have been dedicated and successful advocates for the cause of human development.

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- I don't have to tell anyone in this room that RSA and Americans with disabilities have serious problems to overcome. It is important that all segments of the Rehabilitation community join together in a spirit of mutual respect and complementary unity to form true partnerships for the productive independence, equality, and mainstream social participation of all people with disabilities.

- We have quality programs, excellent resources, and great present and potential support from all segments of our society. As a nation, we cannot fail the millions of individuals in this and future generations who rely on us for access to life. With your ongoing guidance and support, RSA will participate with all Americans in enabling people with disabilities, no matter how severe those disabilities may be, to achieve their full potential for a life of quality.

Senator HARKIN. Thank you very much, Commissioner Dart and Secretary Will, for those opening statements.

Mrs. WILL. Senator Harkin, we have additional staff who I would like to come to the table, and I would like to introduce you to them.

Senator HARKIN. Surely.

Mrs. WILL. This is Dr. Tom Bellamy, who is the director of the Office of Special Education Programs; Mr. LeClair is the Acting Director, National Institute on Disability and Rehabilitation Research. We also have the Deputy General Counsel, Diane Weinstein; and, Carol Cichowski, from the Office of Planning, Budget and Evaluation, if they are needed to answer questions.

Mr. DART. Mr. Chairman, I would like to introduce my distinguished colleague, the Associate Commissioner for the Office of Program Operations, Mark Shoob.

Senator HARKIN. Welcome to the subcommittee.

I have one lead-off question I would like to start with, and then I am going to recognize Senator Weicker, because I understand he has some other obligations that he has to attend to this morning.

Madame Secretary and Mr. Commissioner, there have been several exchanges between the Department and Congress about the 1986 Rehabilitation Act Amendments. During Secretary Bennett's testimony before the Appropriations Subcommittee in April of 1987, on which obviously we both serve, I asked about the Department's commitment to fill vacancies in the Rehabilitation Services Administration so that the agency can fulfill its duties.

The Secretary said that filling the vacancies will be the—and I quote—"highest priority of the head of the Office of Personnel."

Earlier, in December, Members of Congress asked the Department how it intends to fulfill its commitments under the 1986 Amendments. Secretary Bennett replied in April, indicating the steps and time lines for the Department to hire staff, conduct evaluations, implement monitoring and technical assistance programs, award grants and contracts, promulgate regulations, and take other actions.

In September, Senator Stafford wrote to Assistant Secretary Will and requested specific information concerning staffing at RSA.

Also in September, Representative Ted Weiss from the House wrote Secretary Bennett, asking for a point-for-point reply to a letter to the Secretary from CSAVR.

I have a number of questions about the Department's execution of its responsibilities under the Rehabilitation Act Amendments of 1986. Time will not permit me to ask all of them, so many will be submitted to you in writing. And I am requesting at this point your written response within at least 30 days after you receive these questions.

But let me start today's hearing by asking you both these questions.

What progress have you made toward fulfilling the time lines that Secretary Bennett set in his April reply? In particular, what progress has the Office of Personnel made in filling the personnel vacancies in RSA? Those two questions: What progress has been made toward fulfilling the time lines that Secretary Bennett set in his April reply; secondly, what progress has the Office of Personnel made in filling the personnel vacancies in RSA.

I would like to have you just answer the first question and turn your attention to the matter of the vacancies.

Mrs. Will.

Mrs. **WILL**. We have been recruiting as rapidly as possible. We have engaged in a rather extensive national search for the most highly qualified candidates to fill positions.

I do not know whether the Secretary had an opportunity to give you a sense of what the recruitment process is like. For a Federal employee, someone with status in Government, it takes about 10 to 13 weeks to go through the process and bring that person in. For someone without status, it takes between 16 to 21 weeks, if all goes optimally.

We have hired 49 people since January 1. We have another 19 selections made. That means we have named an individual, and that individual is in the process of being brought into the Department. That is actually quite a lot of vacancies filled.

Senator **HARKIN**. Well, let me just respond before Mr. Dart gets going here.

I have a letter from Mr. Dart, dated March 20, 1987, listing 36 vacancies in RSA—36 vacancies. How many of those have been filled?

Mr. **DART**. We have been diligently recruiting to fill those 36 positions. I believe that 19 of them have been filled. I believe that all of those vacancies are in the process of being filled.

Senator **HARKIN**. But since your letter of March, 19 have been filled, or are they in the process?

Mr. **DART**. Nineteen have been filled; the others are in the process of recruitment.

Senator **HARKIN**. I see. I just got a little confused, because you said there were 19 in the process.

Mr. **DART**. Nineteen have been filled.

Mrs. **WILL**. I was talking about OSERS-wide.

Senator **HARKIN**. I understand.

Mrs. **WILL**. Among the number the Commissioner is referring to, we already have 8 individuals named for those positions.

Senator **HARKIN**. These 19 that you have brought in, you say the others are in the process, Mr. Dart?

Mr. **DART**. Yes.

Senator **HARKIN**. And when do you expect to have those through that process?

Mr. **DART**. I would expect that most of them would be—let us say the majority of them—would be filled within the next two or three months. Some of them are coming onboard within days.

Senator **HARKIN**. We talked about the personnel, and I may come back to that, or I may submit that in writing. I want to talk about the time lines that Secretary Bennett had in April, for all of the different things I mentioned—monitoring the technical assistance program, awards, grants, regulations, and other actions. He listed some time lines. And again I would like to know what progress has been made toward meeting those guidelines of Secretary Bennett.

Mrs. **WILL**. As I mentioned in my testimony, we have produced 40 regulatory documents; 29 of these have been published. We have made almost all the entire awards with respect to the new programs. In terms of preschool, we have two States without awards. When part B compliance issues are resolved, the States will receive the awards. In terms of infants and toddlers, all the States have awards except for, I think, seven, where the comment period which has been underway at the State level is not completed. When it is completed, the State will notify us, and those awards will be made.

All the supported employment grants have been awarded. We still have regulatory documents that are in process. Three of those major packages of regulations are already at OMB, and we expect them to be produced very quickly, and the remainder to be published within the next couple of months.

The original decision, Senator, was to do it all; to try to get it all done this year. It was an abnormally high workload; it was a real test for us.

As I mentioned in my testimony, Congress went ahead and reauthorized the two statutes, and I can see the wisdom in that. However, we had requested that you stagger the reauthorizations, because we had analyzed the workload implications.

Senator HARKIN. Mrs. Will, when did these regulations go over to OMB?

Mrs. WILL. Just within the past couple of—which regulations? We have been publishing regulations——

Senator HARKIN. Well, you said there was a package, and I am going to ask you about that package. You do not need to list them all here——

Mrs. WILL. They have been going over for a period of months—the three major packages that I referred to a moment ago are the rehabilitation basic State grants program, the preschool program and the infants and toddlers program. Those packages have gone over to OMB.

What I started to say a moment ago was that we had initially decided to do it all. We realized as we got into it that we could not produce all the packages, so we set a priority—we would do all the regulations that were needed in order to make awards in this fiscal year, and set to a sort of second-tier, if you will, the regulations that were not tied to funding.

Senator HARKIN. Well, again, understand, we are here—and I am sure we are all here to try to help. Here is the list of the regulations that the Secretary submitted on January 30, 1987, and their proposed final regulation state, the last of them being June 5—handicapped infants and toddler, preschool grants, services for deaf/blind children and youth—the whole list of them. I am sure you are aware of those.

Mrs. WILL. Yes.

Senator HARKIN. And again I am wondering why those time lines have slipped, and I still ask when did regulations pertaining to preschool grants and handicapped infants and toddlers go to OMB?

Mrs. WILL. They went several weeks ago. We could make awards under the law, so we made the determination that we would do regs later. We also decided to adopt the practice of subregulatory guidance, which meant we were working very closely with the States to give them advice and assistance about some of the issues.

For example, we used draft applications to give States a sense of how to resolve some of the problems. We had draft applications in terms of preschool available in March; then final in May—may I ask Dr. Bellamy to respond to that?

Senator **Harkin**. Yes.

Dr. **Bellamy**. Mr. Chairman, most of the regulations you mentioned are from the Office of Special Education Programs, so I might be able to clarify some of the time line issues.

There were a total of 20 regulations packages required by the new law. Our initial plan—and that is the one you would have received from the Secretary in January—did involve publishing all of those packages during the last fiscal year. In late February, it became apparent that our progress in getting that done was not as fast as we would like it to be, and we set priorities for seven regulations packages that were absolutely necessary in order to complete the discretionary programs for fiscal year 1987.

We did that, and we did complete all of those discretionary programs. What happened was that in the timing of passing the amendments, essentially Congress required that we go back and redo our entire competition process for those seven programs.

The result of that was that for programs where the statute itself provided a great deal of guidance—that is, the preschool program, the infant and toddlers program, and the Part B program itself—we used subregulatory guidance to provide some assistance to States and then provided funding under the law itself.

Having completed those earlier regulations packages, we began this summer back on the packages that we had had to defer; they are all in progress, and as the Secretary said, the critical ones, we believe, are either at OMB or very nearly finished in the Department's approval process.

Senator **Harkin**. Well, again, I just have to say that this is the second, if not the third time this year—the second; I am sorry, the second time—that we have talked about this issue, and this is the second time I have been told that things are in process.

I will just repeat for you from April 23, "My office has prepared 27 regulation packages; 7 of them are in final clearance; the rest are to follow."

And Mr. Carnes said, "Those regulations are on track; they are in final clearance now; they will be published in May. We will have the applications in June, the awards in July."

I asked the question, "Are there any factors that could result in a delay in the availability of this money?"

Mr. Carnas said, "Not at this point. We do not foresee any. We have developed a package. It is to be cleared, and the applications out within three weeks."

I asked this question: "A follow-up question—do you see any factors that could delay it?"

"No."

And yet here we are again, saying that they are over at OMB.

Mrs. **Will**. Senator Harkin, I had assumed that you had been advised that we had made this determination to put a set of regulations that were not tied to funding on a larger schedule. I think that was a good decision given the fact that we were faced with a

35 percent increase in workload, a big surge in workload in this year.

We tried, originally, as I said, we thought we could produce all those regulations. But we made a good decision, and it has not had an adverse impact on programs, given that we were able to work with States, using subregulatory guidance, and send out documents that state some issues, questions that State agency personnel might have had with respect to implementation, and answer those questions. It gives them a sense of what might be in the regulations to come. And in the meantime, we funded under the statute.

But certainly, you should have been advised of that, and I had assumed that our Office of Planning and Budget would have communicated that to you.

Senator HARKIN. I understand that there were guidelines that were sent out, or something to that effect. But again, the regs are still not out; there is still some ambiguity in the field; we hear about that. Plus I just have to ask you the question, if this had to be done in that matter, I guess I come back to the first question I asked about the filling of vacancies. Is it because of lack of personnel that this was not done, or is there some other reason?

Mrs. WILL. No. I think it was simply because of the crush of business. We were recruiting to fill vacancies as rapidly as possible and have been able to recruit some very highly-qualified people. We have overall had a 6 percent decrease in the OSERS staff as compared with an 18 percent decrease in the Department staff. But let me add that as soon as we learned or identified the task before us in terms of the reauthorizations, I went to the Department and asked for additional personnel. And the Department agreed and gave us 27 new positions, which then we set out to fill.

With respect to ambiguities in the new programs, the regulations, I would ask Dr. Bellamy to explain or to give an indication of what those might be and how we have dealt with those issues.

Dr. BELLAMY. There are a number of issues that the statute itself leaves open for regulation, particularly in areas where the new programs, the infant and toddler program, for example, relates to the Part B program, or how the infant and toddler program relates to other programs——

Senator HARKIN. Excuse me for interrupting. Were guidelines sent out for the early intervention program?

Dr. BELLAMY. The guidelines for the early intervention program are in progress. We have sent out guidelines on both the preschool program and the Part B program. In lieu of guidelines on the early intervention programs, we held a meeting with State representatives from all three State agencies—the education, health, and social service agencies—in Washington during the summer, and discussed those issues.

Senator HARKIN. We have had a lot of battles over the early intervention program—I am sure Senator Weicker can speak about that in much more depth than I can—but again, here we are in October, and the guidelines have not gone out, and you have said they are in process. It is presumptuous of me to ask when they might be out?

Dr. BELLAMY. The guidelines that you mention are our responses to a fairly long set of questions that we have been compiling in response to, I am sure, the same kinds of information that you are getting. We are answering those in individual policy letters and by disseminating those policy letters as broadly as we can, and we are compiling those—as we get a set of them clearly answered in ways that States can use the information, we are compiling those into the summary guidelines documents.

What we have right now are a series of policy letters that have gone out, describing answers to some critical questions. Quite frankly, there are some real puzzles in the statute that will take quite a bit of time to work through. They are not things that we will simply sit down and write a guidelines document about. Our Office of General Counsel is, and has been, working on answers to a few of them for quite some time.

Just to give you a sense of the complexity of what we are working on, for example, a State might use funds under Part H, the infant and toddler program, to fund early intervention services for some infants and use funds under the Chapter I program under ECIA, the Chapter I handicapped program, to fund other infants and toddlers.

Well, those two statutes have very different provisions for requirements for parent payment. That creates a possibility of some fairly significant inequities in the way that a State might implement the program. We are trying to work that out. It may in fact be that we will work it out by requesting your assistance with statutory adjustments.

But that is the kind of puzzle that, when we say we are trying to provide statutory guidance, that is the kind of issue that we are working on.

Senator **Harkin**. I am not finished with this whole area. I would again just point out that this was not our schedule that we set up. This was the Department's schedule. So I am wondering, if it was unreasonable in the beginning, I would like to know why it was unreasonable; if it was not unreasonable in the beginning, then I am still trying to figure out why these deadlines were not met, and I think a lot of it has to do with personnel. I would be glad to get into that further, but I recognize that Senator Weicker has some time problems, and I would like to recognize him now.

Senator **Weicker**. Thank you, Mr Chairman.

Just to follow up on the Chairman's query, is it a matter of law or a matter of policy that these regulations get sent to OMB? Why do they go to OMB?

Mrs. **Will**. Let me ask Charles Kolb, from General Counsel's Office, to answer that.

Mr. **Kolb**. Senator, regulations are sent to OMB, I think as you probably know, in connection with an Executive Order that President Reagan issued in February 1981, which vests the Office of Management and Budget with the authority to review major and non-major regulations.

Senator **Weicker**. Well, before we all come crashing down on Madeleine, what is the time element involved over at OMB in this process?

I mean, if everybody in the United States Government has to send their regulations to OMB, I would imagine that might potentially create a bottleneck. NOt to mention the job that OMB has to do in terms of constructing a budget.

Mr. **Kolb**. Well, it depends on your perspective. I do not think OMB is necessarily a bottleneck. They do review major and non-major regulations. Most of the regulations that we are talking about here, I believe, are non-major regulations which they usually turn around in approximately a 10-day period.

Senator **Weicker**. And on the matters that have been discussed here this morning. Have you have received 10-day responses from OMB on all these regulations?

Mr. **Kolb**. I cannot tell you specifically with regard to all of these regulations, but let me try and shed a little——

Senator **Weicker**. Before you respond, let me ask if it also the procedure to send whatever you devise within your Department to the Secretary?

Mr. **Kolb**. Do you mean the normal clearance process of regulations?

Senator **Weicker**. Yes.

Mr. **Kolb**. Yes, sir, that is correct.

Senator **Weicker**. So regulations must move from your Department to the Secretary, to OMB.

Mr. **Kolb**. That is correct.

Senator **Weicker**. Well, how long does that process take?

Mr. **Kolb**. Well, could I back up a second and try and address both of your questions with regard to the time lines. I believe by law, the Department is generally required to issue regulations within a 240-day period. Quite frankly, we do not always do that, but we do the very best we can.

As Assistant Secretary Will explained, the regulatory burden that fell out of these reauthorizations was a fairly large workload increase for OSERS and for the Department. But I think it is a question of looking at whether this glass is half-empty or half-full. I would agree with the Assistant Secretary that the performance on the whole is commendable. If you look at the approximately 20-25 regulations, I show almost 10 published; that, I think, is significant.

I will have to defer to her in terms of the programmatic implications here, but I do not think that any of these communities has been adversely affected by this.

In terms of trying to meet this schedule, the Department has attempted to prioritize its regulations so that we got out as quickly as we could the ones that were most important; but at the same time, we also had to work on documents which were needed to get out funding for fiscal year 1987.

So I guess if you are going to fault us, maybe we made a misjudgment in terms of the priorities. But I think on the whole we did a very good job.

I will have to go back and check our records, but in terms of the 240-day period, I believe we usually notify Members of Congress if we are going to miss that. And I would be very surprised if we did not in this case, but I will go back and check our records and see if we did not in fact notify you of those changed deadlines. See attachment B.

Senator **Weicker**. Well, again, I repeat, the thrust of my questioning as distinct from the Chairman's questioning, is to how much this process is consumed by both the Secretary's office and OMB. And the reason I ask that question is because I am very aware of the less than enthusiastic response from both those entities when the legislation was devised, and when it was passed, and even today. In other words, my question is directed toward the performance of the Department and OMB, as opposed to the performance of the Assistant Secretary.

Mr. **Kolb**. With respect to the Secretary's office, I think the regulations stay in that part of the Department a relatively small period of time. Most of the time we are talking about here is spent in connection with drafting, processing and reviewing the regulations. Our goal is to turn out a high-quality product, free from ambiguities, and something which is actually workable. That is not always easy to do.

With respect to OMB, that is going to vary from regulation to regulation. But I think those dates are now public. I think that in connection with changes OMB has made over the last year, anyone who is interested can actually look—it is on the public record when a notice of proposed rulemaking or a final regulation goes over for clearance and when it is issued. But those dates are going to vary from document to document.

Senator **Weicker**. Well, I just want to let you know that I appreciate that you had a lot to digest from the last Congress; but I also want to put you on notice that I have got lots of ideas——

Mr. **Kolb**. Fine. [Laughter.]

Senator **Weicker** [continuing]. And I know that the Chairman does, so you had better get this under your belt fast, because I have a feeling more is coming over the hill.

Mr. **Kolb**. We will do our best.

Senator **Weicker**. One last question here to Madeleine and to Justin. Important amendments were made last year to the Rehabilitation Act in technology and rehabilitation engineering. There is no question that technology can play a key role in assisting people with disabilities live more independent, productive lives.

You indicate in your testimony that the Department has established a Task Force on Technology. Can you tell us what issues you intend for the Task Force to address regarding the implementation of the technology and rehabilitation engineering amendments and how that information will be made available to the rehabilitation service providers?

I also would like you to comment on why all the State Rehabilitation Directors refused to participate in the meeting that you held on this subject.

Mrs. **Will**. The Rehabilitation Engineering Task Force has as its central mission determining ways in which rehab engineering can be integrated into the rehabilitation process—for example, the development of the IWRP, the individualized written rehabilitation plan. That task force has met and is beginning to identify the various phases or components of the rehabilitation system and then will zero in on each of those phases to try to come up with suggestions for us to implement.

Senator, was that a comment or a question?

Senator **Weicker**. No; I am asking a question. In your testimony, you indicated that you convened a Task Force that was supposed to include the State Rehabilitation Directors. Yet none of them came. Why?

Mrs. **Will**. Yes. The Council of Administrators of State Vocational Rehabilitation Agencies has sent a letter, actually, a series of correspondence, and indicated refusal to deal with me, then refusal to deal with the Secretary; and has withdrawn from a number of activities such as the supported employment training project, in addition to the rehab engineering task force.

Senator **Weicker**. Why?

Mrs. **Will**. Senator, you will have to ask them.

Senator **Weicker**. The letter I have is one to Justin from the Council of State Administrators of Vocational Rehabilitation.

Recently, the Council received correspondence from the Assistant Secretary, inviting the organization to name a representative to participate as a member of a rehabilitation engineering task force for the purpose of providing assistance to OSERS and to the RSA.

Commensurate with a resolution of the executive committee of this organization, they unanimously adopted to:

> Only communicate with and respond to policy decisions, directives, or requests for input or information or other expressions of authority as fashioned and expressed directly by the legally mandated Federal administrator of programs, authorized by the Rehabilitation Act, namely, the Commissioner of Rehabilitation Services.
>
> The Council would be pleased to be a part of any Rehabilitation Engineering Task Force that is formed by the Commissioner of Rehabilitation Services.

Now, can someone tell me what is going on here?

Mrs. **Will**. Well, I think that there is a misperception about the nature of my authority. I have supervisory authority over the components—the Office of Special Education Programs, the Rehabilitation Services Administration, and NIDRR—and I believe that that is one explanation.

Senator **Weicker**. Justin, would you like to comment on this?

Mr. **Dart**. Well, I would repeat what the Assistant Secretary has just stated, and that I feel that my distinguished colleagues from the State agencies are here today, and they are going to testify, and that they will be able to present their point of view to you adequately.

Senator **Weicker**. Well, I must say that when they are invited to have input, and they do not avail themselves of that opportunity, something is very amiss. Maybe the perception is amiss in terms of who is doing what. But I make the assumption that you, Madeleine and you, Justin, are working together on this project. And I think it is clearly divisive, when someone indicates they are going to deal only with one individual and not the other. But I hope that that perception is not out there any longer, because I am going to dispel it right now at this hearing.

I repeat—we have enough problems without seeing this kind of correspondence come through. Would you agree? Would both of you agree on this matter?

Mr. **Dart**. Unity in our agency and in our community is absolutely essential to have quality services for Americans with disabilities. I certainly agree with that.

Senator **Weicker**. Well, I certainly will try to come back here. I notice that the author of the letter is due to be on the next panel, so I will not pursue this any longer. And again, my comments, were made in my opening statement.

But I do not like to see this happen. I know there are people in the Administration who would love to have the disability programs fall apart. You do not have to be squabbling among yourselves. I can assure you if this whole program fell apart at the seams, they would be overjoyed. I can see the scenario, at the presentation of the next budget—well, nobody really wants this program, so, zero, zero for the budget. Hey, I can see it. I know exactly what is going to happen.

All right. I have further questions for response to the record of these witnesses, and I thank you both very much. I will try to return for some questions of other individuals.

Senator **Harkin**. Thank you, Senator Weicker.

Senator Adams?

Senator **Adams**. Mr. Chairman, I want to follow up on Senator Weicker's questions, and I ask that a memorandum to Mr. Jewel Sugarman from our Assistant Secretary of the State of Washington—I have given a copy to the Chairman—I would ask that it be included in the record.

I want the witness to have an opportunity to examine it. Madame Secretary, this is the memorandum that is dated September 30, 1987, and it is from the Assistant Secretary of Health and Rehabilitative Services of the State of Washington to the Secretary of the Department of Social Health and Services.

[The letter referred to follows:]

ULE M SUGARMAN
Secretary

206-753-3395
3327

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504-0095

September 30, 1987

TO: Jule Sugarman
Secretary

FROM: Thelma R. Struck, Assistant Secretary RS
Health and Rehabilitative Services

SUBJECT: TELEPHONE CALL FROM MADELINE WILL

On September 28 I received a telephone call from Madeline Will. Because I was so disturbed by the content and tone of that call I decided to inform you. Assistant Secretary Will, who is someone that I have never talked to nor corresponded with, introduced herself and then immediately began questioning me about a letter signed by Paul Dziedzic addressed to Secretary Bennett. The tone of her questioning was very angry. She said that this letter was full of unsubstantiated charges, biased, misleading, false, etc. She wanted to know if the State of Washington supported the stance taken by Paul. I explained to her that Paul has signed this letter in his capacity as President of the Council of State Administrators of Vocational Rehabilitation (CSAVR) and not as the Director of the Washington State Services for the Blind. She said that she and Secretary Bennett did not view it in that light, but considered this to be Washington's official position and as such they considered this to be a very serious action. She said that Washington State would be held accountable for these actions . She wanted to know about the Governor's involvement and said she planned to talk to the Governor. I told her that to the best of my knowledge members of the Governor's staff were informed by Paul after the Council had taken their action and the letter sent.

The tone of her conversation was very threatening and clearly intended to be intimidating. Although no specifics were given, the fact that Washington State could expect consequences was mentioned. I promptly called to inform Dick Thompson, Director of Governmental Operations, that the Governor could expect a call only to discover that she had already called the Governor's office before talking to me.

Ms. Will called me again a few minutes later to tell me that the letter signed by Paul and other Council Members was sent on his Washington State Department of Services for the Blind stationary. She sited this as proof that this was an official Washington State action. She also said that her office had full authority over rehabilitation matters and that we should not try to challenge that authority or we would find out how extensive that authority was.

Senator **Adams**. Now, I want to give you an opportunity, Madame Secretary, to say whether this is true. But what we have here is that, according to this memorandum—and I want you to say whether you feel it is true or not—the next witness who will be testifying, Mr. Dziedzic, who is also President of the Council of State Administrators of Vocational Rehabilitation, and is Director of Washington State Services for the blind, that you called the Governor's office, you called the Assistant Secretary's office, according to the memorandum. And I quote: "The tone of her conversation was very threatening and clearly indicated to be intimidating." It refers to the letter that Senator Weicker just read.

> Although no specifics were given, the fact that the State of Washington could expect consequences was mentioned. I promptly called to inform Dick Thompson, Director of Government Operations, that the Governor could expect a call, only to discover she had already called the Governor's office before talking to me.
>
> Mrs. Will called me again a few minutes later to tell me that the letter signed by Paul and other Council members was sent on his Washington State Department of Services for the Blind stationery. She cited this as proof that this was an official State action. She also said that her office had full authority over rehabilitation programs and that we should not try to challenge that authority, or we would find out how extensive that authority was.

Now, Madame Secretary, it is up to you to characterize or state what you were attempting to do with this letter. I view it as threatening, and I am simply here to protect the people in my State, and of course, the national interest, in terms of whether or not both the witnesses and the people needing rehabilitation in my State are threatened with some kind of retaliatory action.

I have been in the Government. I have been a Secretary of a Cabinet office, and I have some idea as to how the system works.

So, did you say anything that could reasonably be interpreted as a threat to the interests of the people of the State of Washington?

Mrs. **Will**. I most certainly did not. My tone was not angry. I was genuinely puzzled, perplexed, and still am, about the nature of the charges in the letter, which are false and unsubstantiated. But also, Senator—and this was the reason why I made the call, and I think you should know that I have called other Governors as well—but there is a legitimate question in my mind and, I think, the Department's mind about the implications of the letter in terms of the fact that the signatures were the signatures of individuals as State agency administrators, not as individual members of an organization.

And as I explained to Mr. Thompson, I thought that it was, at least in my mind, unclear; there was murkiness about the nature of the action and who actually was taking action. I wanted to know whether the positions in the letter represent the views of the Governor and the State of Washington, or whether they were in fact just the views of individual administrators. I think that that is an important piece of information. I was seeking clarification. I never threatened anyone.

I mentioned the fact as evidence of murkiness that we had encountered resistance to monitoring visits, that we had this piece of correspondence which indicated that no one would be sent to the Rehabilitation Engineering Task Force. We have since received a letter from a State agency telling us it refuses to participate in an evaluation contract. The letter has significant program ramifications, and I wanted to try to get to the bottom of this.

I must say that I had a very agreeable conversation with Mr. Thompson. He indicated to me that the State of Washington has every intention of cooperating with the Federal Government, with me, and that he feels confident that we can move ahead in partnership.

I have since received letters from several Governors, indicating that they view these working relationships between their State and the Secretary and myself as fragile; they want them to be nurtured and reinforced, and that they view the precipitous actions of their directors as unproductive and unhelpful.

Senator ADAMS. Well, I would like to put this incident behind us, and I would certainly let Mr. Dziedzic speak for himself. But having administered State-Federal programs, I find this kind of call and response very unusual, just as Senator Weicker indicated, that there had been criticism of groups, there was maybe criticism of administrators. I am concerned by the fact that this would happen and then there would be not only a cut-off of total funds, as indicated by Senator Weicker, but that States would be singled out because they had not fully cooperated. And I just am very concerned about it. And I certainly, as a Member of the United States Senate, am not telling you how to administer your office, but I see very clearly a conflict between what was set up in the statute, wherein you have an administrator, and your office, since the Assistant Secretary office is basically political, with an OMB backdrop—I am very familiar with the Executive Order—that somehow, this is not working. And if these administrators and the people from the State are not coming into your program, attending your workshops, it means they feel they are being set up.

I want to know whether or not you have corrected this, and what we can expect in the next few months as this goes on. We simply want to have these Federal-State relationships work, and they are easily destroyed by regional offices of the Federal Government, or by offices of the Secretary if they are hostile. And I hope that you are not hostile, and I hope that you and Mr. Dart have settled your internal differences, if there are any, and that the people in my State and others can expect the carrying out of a partnership which is outlined in this statute.

That is what I want to know from you. It is very simple.

Mrs. WILL. I can assure you that we have every intention of working cooperatively and in partnership with the State agencies. In the Secretary's response to the initial letter, he indicated that Mrs. Will would be available to meet with them at any time. I have not been called for a meeting.

I think that we have, both of us, Justin and myself, a responsibility to administer these programs well. We have real concerns about the performance of the program. We monitor on an ongoing basis. We establish schedules. We have a need to evaluate that program, and we are puzzled by the resistance that we are encountering.

Now, if it is the case that we are setting them up, as you said—and I am not quite sure what that means, Senator—I need to know how, because I have no intention of doing that. I am not about the business of that.

This dispute is not about management. It is not about authority. It is about one thing, and that is services to severely handicapped people, and the way in which we can move the rehabilitation system in the direction of serving more and more severely disabled individuals, by looking at policy, by evaluating, by looking at data, by looking at performance standards and building in reinforcers for counselors to serve more and more severely disabled individuals.

I think we all share that goal, and I surely hope we can proceed to work in partnership to attain that goal. I am committed to that, and I will not speak for the Commissioner, but I know he is also.

Senator ADAMS. I appreciate your candor. I hope that this is the circumstance. I am familiar with these programs from over two decades. By "set up", I mean if you indicate in a program, and you bring everybody in, and you take data, and you evaluate, and after months and months, nothing has still happened, that is setting people up—and people will not attend that. They feel that they do not want to lend their name, their organizations, their assistance, to something that will produce no results, because they are in the field.

Now, you have indicated to me that that is not the circumstance and that you intend to cooperate and move the program forward.

I just think—and I want to be certain that the witnesses and the others are not or do not feel threatened; and second, I would like to see the people attend your meetings, participate in them, and be certain that we have a Federal response to the State areas that indicates some confidence in them that this program is not a paper shell, but is an active, continuing movement forward.

That is my question, and Mr. Chairman, it follows on Senator Weicker's concerns and yours, and it appears to me this Committee must have an answer to that, or we will be back with it again.

Mrs. WILL. All I can say is that I reissue the invitation that the Secretary extended to this organization to meet. There are no issues that cannot be discussed——

Senator ADAMS. And no consequences from the use of your authority in talking with these people?

Mrs. WILL. Senator, this is too important to be talking about retribution. We are talking about——

Senator ADAMS. I am glad to hear you say that, because that is how this was interpreted, and with that statement, I will accept your statement, Madame Secretary, that that is the way you feel, and we will let history decide between us, but it will be a short history.

Thank you, Madame Secretary.

Thank you, Mr. Chairman.

Senator HARKIN. Thank you.

Mr. Dart, do you wish to respond?

Mr. DART. Yes. I would just like to comment briefly on this issue, Senator. I certainly agree with you that the Rehabilitation Services Administration can only perform its statutory and moral responsibilities under the law in full and positive partnership with the State vocational rehabilitation agencies and our grantees, and indeed, with people with disabilities, their families, and advocates.

It has been my privilege to visit with the State Vocational Rehabilitation people and the advocates of each of the 50 States. I met with most of their staffs, and I have been impressed with their dedication to the program, to the services for people with disabilities, and I have been impressed with the good job that they are doing on the whole. I think that they are deeply concerned about problems, serious problems, in the Rehabilitation Services Administration which have accumulated over more than a decade and which are in their view, and indeed in my view, negatively impacting services to people with disabilities.

I feel that these are legitimate concerns, and I feel that they are dedicated to services to all people with disabilities, including people with very severe disabilities and on the whole are doing a good job in this regard.

Senator ADAMS. Thank you, Mr. Dart.

Thank you, Mr. Chairman.

Senator HARKIN. Senator Cochran, who has been here diligently since the beginning of this hearing, had to leave to go to another Committee meeting. Senator Cochran does have some questions for this panel, and they will be submitted in writing to you. And I would ask the same as I did in my opening statement, that they be responded to within 30 days.

Mr. Dart, on June 2 of this year, Senators Hatch, Weicker, Stafford, Simon and myself sent you a letter expressing our expectation that you will take timely and necessary steps to ensure that each Center for Independent Living have a governing board composed of a majority of individuals with handicaps.

In accordance with section 804(a)(2) of the 1986 Amendments, this change is to take effect in 13 days, which is 1 year after the date of enactment.

The question is what steps have you taken, are you taking, to ensure that this mandate is complied with in this timely fashion?

Mr. DART. I have recommended strongly to my superiors that we publish regulations for public comment as advised in your letter.

Senator HARKIN. I do have something else. I asked—this is to take effect in 13 days. Has it gone out so that each of the Centers will have a governor board with a majority of handicapped individuals? Will that be complied with?

Mr. DART. Could you repeat that, Mr. Chairman?

Senator HARKIN. In 13 days, this mandate was to be complied with. Can you assure me that in 13 days, 1 year after enactment, that each Center for Independent Living will have a governing board composed of a majority of handicapped individuals?

Mr. DART. Well, Senator, I have made a recommendation to my superiors, and this is a decision which is in the process of being made, and I would like to get back to you on that in writing, and at such time as we have the final decision in that matter (see attachment C.)

Senator HARKIN. Fine. Did you have any comment on that, Mrs. Will?

Mrs. WILL. No.

Senator HARKIN. Now I want to get to the topic of the relationship between RSA and OSERS. I do agree, Madame Secretary, with your response that you gave to Senator Adams—basically I agree with it. You are correct; this hearing is about how to best get these services to those handicapped individuals. That is what this is all about; that is what we are all about. But to the extent that certain relationships, perhaps ambiguous by law, or perhaps ambiguous not because of the law but for other reasons, might in some way inhibit the expeditious providing of those services to the handicapped.

So I believe it is well within our purview to examine these relationships and the management aspects of this. To that extent I might disagree with your response to Senator Adams that this is not about management. It is somewhat about management in that regard.

Therefore, my question for both of you—I am not singling you out; for both of you, I want to ask this question—is there a need to amend the Rehabilitation Act and the Department of Education Organization Act to clarify the relationship between the Commissioner of RSA and the Assistant Secretary for Special Education and Rehabilitative Services? Would a memorandum of understanding suffice, or does there need to be legislative changes, or could some memorandum of understanding suffice for this?

Mrs. WILL. I am not sure I can answer that question, Senator. A short answer to your question, is as I indicated in my testimony, I think we could need both. I think we do need to look at the structure of OSERS, and that is why I am proposing to create this working group. It is possible that the issue could be resolved in terms of a memorandum of understanding. It might take regulatory or statutory change.

But I am comfortable, and I think the Department is comfortable with the definition of the authority of the Assistant Secretary, and if you would like I can have the General Counsel or Deputy General Counsel, who are here today, give you a sense of how we view that issue in legal terms.

But we welcome your assistance.

Senator HARKIN. Well, I would like to give assistance. Obviously, I am predisposed to hope that this could be handled nonlegislatively. Obviously, we are not in the business of micro-managing anything around. I would hope that it would be handled.

But I recognize that there have been some actions taken by the Congress that might lend themselves to misinterpretations. For example, the House-Senate Conferees just this last year rejected the provision of the House bill that would have transferred the authority to appoint the RSA Commissioner from the President to the Secretary of Education. That was in the House bill, and the Conferees rejected it.

On the other hand, they also rejected the House provision that would have had the Commissioner report directly to the Assistant Secretary. So we sort of got mixed signals there.

What I would like to know is do you agree with that result, that they rejected this House provision that would have transferred this authority; the President now appoints the Commissioner, and the Assistant Secretary. There was a House provision that would have had the Commissioner report directly to the Assistant Secretary, and that was thrown out, also. But in the organizational structure, it seems to me that that is the lines of authority—I am sorry—in the Department of Education organization chart; that is what I am talking about.

Again, I would just ask for your comments on this.

Mrs. **WILL**. I believe that my office is the only office in the Department of Education that has three Presidentially appointed individuals who are confirmed by the Senate.

Senator **HARKIN**. Who is the third?

Mrs. **WILL**. The Director of the National Institute of Disability and Rehabilitation Research.

It is an unwieldy management structure, and it does lend itself to confusion, and I would say that the Department made an attempt to try to improve the situation by proposing legislation which would have changed the position of the Commissioner and the Director to positions that did not require confirmation by the Senate.

I think that is the sort of recommendation that we would expect to see addressed by the working group that I want to establish. I do not know that it is the only way to solve the problem, but it is one that we certainly thought had potential last year and one that we will look at again.

Senator **HARKIN**. Mr. Dart, I would like to ask for your input on this.

Mr. **DART**. Senator, following my visits to each of the 50 States and meetings with virtually almost every RSA staff member and other authorities in our field, and my experience for 13 months as Commissioner, I am convinced that we have very serious problems in RSA, many of them pertaining to the management, which need profound attention. Whether this would involve legislative change, I am not an expert, and we have not progressed in our deliberations to where I would want to make a recommendation like that. And I agree with you—one would hope that at least reasonable interim change could occur without legislation among reasonable people.

We are doing our best to address those problems. So far, we have not resolved them.

Senator **HARKIN**. The working group that you say you are planning to establish, I hope it is moving along. I assume what you say is that you are going to work on this management situation. Again, I do not want to put you on the spot, but I want to know when—I think this is important, I think it is really important.

Mrs. **WILL**. I think it will take about six months. We will establish the group and they will deliberate and then make recommendations.

Senator **HARKIN**. I would hope that it might be quicker than that.

Mrs. **WILL**. We will do everything possible to expedite that process, Senator.

There is something else that is very important to consider when thinking about the structure of OSERS—of course, the structure itself is critically important, but we want to maintain the link between special education programs, NIDRR and RSA, because those three programs have input in policymaking that affects disabled people from zero to death; and that is a very, very important consequence of having put the programs together, and I think everyone in the country agrees we need to foster even more cooperation between special ed and RSA, and special ed and NIDRR, and it is simply a matter of finding the mechanisms to more fully integrate those programs.

But it is important for the individual, for the family, and it is important for the organization itself to reflect the needs of the disabled consumer.

Senator HARKIN. I really agree with you that all of this has to be integrated and coordinated—all of it does. I hope we all agree on that. I am hoping that we can move ahead on this, but I am concerned that some of these problems may still manifest themselves if, in fact, we do not get a resolution of this management situation. That is why I am hoping that this working group that you would set up would do better than 6 months—if you could give me a couple or 3 months——

Mrs. WILL. Let us try for the beginning of next year. We will make a real effort to do that.

Senator HARKIN. I would appreciate that. I think that would be most important.

Now let me talk about the external relationships. I will just read you a letter, and then I will make a comment and ask you for your comment.

On September the 10, 1987, the National Head Injury Foundation sent Secretary Bennett a letter, which stated in part, and I will quote:

> As parents and consumers, we join in calling for immediate action to be taken to end the present stalemate and confusion that exists within OSERS. If these disruptive actions within your Department are left unchecked, persons with head injuries are, again, the ultimate victims.
>
> Whether intended or not, these actions have fractionated the disability community and have diverted our energies. This internal bickering and lack of cooperation with service providers and consumers has greatly undermined any semblance of national leadership. It is important that all segments of the disability community work cooperatively, and it would be only fitting for that to begin at a national level.

That is the end of that quote. My comment is twofold. First of all, we will have Mr. Dziedzic before us, but the letter—and again, I am not trying to point blame or anything. All I am saying is—and I will have him comment on this—his statements in the letter do not add to a spirit of cooperation and working together. I do not know that this letter does, either, the comment that I just made to you. But it does reflect a concern out there. And to that end, I want to resolve that concern.

I am trying to ask all of these different elements to work together in the spirit of cooperation.

Having made my own statements on that, I just want you both to comment on the statement of this letter from the National Head Injury Foundation and to talk about efforts that you have made to meet and resolve these problems, both—we have already talked about it within the Department, but within the disability community.

Well, I think I will ask a question that is probably self-answering, and I think I know what the answer is, but that is probably why I am going to ask it. Is unity possible? It is really, is unity possible, and can we get this kind of cooperation with the disability community that is necessary to get us all moving in the same direction.

As I said, I believe I know the answer to that.

Mrs. WILL. Yes, I think it is possible, and I am always willing and prepared to make attempts to build the fragile partnership with various sectors of the disability community.

I think it is important that we do not want to dismiss or disregard this issue, but let us not get it out of perspective, either. It is not the most significant thing that is going on in terms of the program. We have ongoing work—the regulations, the grants, the monitoring and evaluation—all that is going on, and that has to be a central focus.

I have talked to my staff about not becoming preoccupied with "Who struck John?" kinds of stories and activities. We need to continue to extend ourselves, indicate a willingness to work. The Commissioner and I have talked on a number of occasions; we are going to continue to talk. I want to work with him. He has pledged his willingness to work with me. I think that we can get beyond this issue, Senator.

Senator HARKIN. Thank you.

Mr. Dart, any comments on this?

Mr. DART. Well, I think that we do have problems of the nature that are referred to in the letter, and it is my perception or my information that this type of problem has existed for some time before I became Commissioner. We have had a series of executives and top professional people come and go. We do have a serious morale problem, in my view, in the agency. And I, like the Assistant Secretary, am determined to do everything that I possibly can, within my very limited authority, to overcome this problem and to contribute to unity in the agency and in the community. And I refer to unity based on mutual respect and based on the power of positive relationships and based on full partnerships with our State agency and grantee partners, with each other in the agencies, with advocates, with disabled people, their families, and service providers throughout the Nation, full partnerships based on equality.

Senator HARKIN. The letter that you received, Mr. Dart, from Mr. Dziedzic, dated September the 10, 1987, saying that they would only communicate with, respond to, et cetera, et cetera, the Commissioner of Rehabilitation Services, also said, "We look forward to hearing from you on this important matter."

I have a question and then an observation. Did you respond to that letter; did you write a letter to Mr. Dziedzic after you received this letter of September 10—and if so, I would hope that that letter would have outlined to him that this certainly is not the kind of attitude that adds to a spirit of cooperation and working together with you and the Assistant Secretary—did you respond to that letter?

Mr. DART. Senator, which—I received a number of letters from Mr. Dziedzic. Could you——

Senator HARKIN. Well, this is the one dated September 7th which said, basically, that he had received correspondence from the Assistant Secretary, asking him to participate in this task force. And then he wrote to you saying, basically, "We do not follow the directives there; we only communicate with you and RSA."

I am just wondering, did you respond to that letter?

Mr. DART. I did speak with Mr. Dziedzic on the telephone immediately, in regard to that letter.

Senator HARKIN. But you did not write to him; this was a verbal communication on the phone?

Mr. DART. I assume that we answer—we usually answer all letters that we receive of that nature in writing, but in order to have the most positive possible communication, I do attempt to respond to matters of this importance immediately by telephone, and I did so.

Senator HARKIN. Again, I am not going to ask you what you said. I am just going to say what I hope you said, and I hope you told him, again, that this was not conducive to close cooperation and working relationship between the Commissioner and the Assistant Secretary; that both of you are together in this and that you both mutually support one another in this effort; and that such kind of correspondence does not add to that spirit of cooperation.

My staff director is just telling me that because of my concern with the deaf community—as you know, I have a special concern in that area—talking about a special unit that you had set about setting up—but I will submit that question to you in writing. We have taken a lot of time.

Are there any other comments or anything else that you would like to bring before the subcommittee?

Mrs. WILL. No.

Senator HARKIN. Then I will just say that I hope we—no, I do not want to put it that way—I was going to say I hope we do not see you until January, but what I am saying is let us plan on having another meeting sometime in January to talk about this working group and to again, hopefully, talk about the regulations that are at OMB, and I hope by that time will have come back and we will have had those things resolved. We will look forward to that in January.

Thank you both very much. And again, I am just going to say for the record, I do not know you both personally probably as well as Senator Weicker does; but I know you both by reputation, I know you both by talking to Senator Weicker about your abilities and about your performance in your respective positions. And I want to say I think they are very good. I think both of you are excellent advocates for individuals with handicaps in our society. And I just want you to know that if we can be of any help in getting over some of these things, that is what we are here for.

And as I said at the beginning, I did not want this to be any kind of adversarial kind of meeting, but one to take a look at our mutual interests. I have to exercise my responsibility of oversight and to make sure these things are done in a timely manner, and to make sure that the intent of Congress is being fulfilled.

So again, I am just fulfilling that obligation that I have. So anything we can do to help, our staff, your staff, we are more than willing, I am sure, to meet and communicate on any of these topics.

So, we will see you in January sometime; I hope not sooner—not because I do not like you, but because I hope we do not have to meet before January.

Thank you both very much.

Mrs. WILL. Thank you.

Mr. DART. Thank you, Mr. Chairman.

Senator HARKIN. The next panel will be Mr. Dziedzic, Director of the Washington Department of Services for the Blind; Robert Williams, Program Analyst for the Association for Retarded Citizens; Gregg Vanderheiden, Director of the Trace Center, University of Wisconsin, here on behalf of the Association for the Advancement of Rehabilitation Technology; and Mr. Eric Griffen, Vice President of the National Council on Independent Living.

I would just say to the third panel who is here—the National Center for Clinical Infant Programs and others who are on panel 3—that it is my intention to get panel 3 in by noon; because of a previous engagement, I have to leave here by noon, and if we do not have the time then, I will ask our Staff Director, Mr. Silverstein, to conduct that third panel.

I want to welcome our second panel here. I will go in the order in which I called you: Mr. Dziedzic, then Mr. Williams, Mr. Vanderheiden, and Mr. Griffen.

So again, we welcome you all here. My intention is if you could take no more than 10 minutes, 5-to 10-minute comments from you, I would deeply appreciate that, and we will just go down the list, and I will save my questions until each of you have had your say.

So, Mr. Dziedzic, again, welcome to the Subcommittee, and if you can keep it below 10 minutes, I would be most appreciative.

STATEMENTS OF PAUL DZIEDZIC, PRESIDENT, COUNCIL OF STATE ADMINISTRATORS OF VOCATIONAL REHABILITATION, WASHINGTON, DC, AND DIRECTOR, WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND; ROBERT WILLIAMS, PROGRAM ANALYST, ASSOCIATION FOR RETARDED CITIZENS, WASHINGTON, DC, ACCOMPANIED BY TONY RECORDS; DR. GREGG VANDERHEIDEN, DIRECTOR, TRACE CENTER, UNIVERSITY OF WISCONSIN, ON BEHALF OF ASSOCIATION FOR THE ADVANCEMENT OF REHABILITATION TECHNOLOGY, WASHINGTON, DC; AND ERIC GRIFFEN, VICE PRESIDENT, NATIONAL COUNCIL ON INDEPENDENT LIVING, CHICAGO, IL

Mr. DZIEDZIC. Thank you, Senator, Mr. Chairman.

My name is Paul Dziedzic, and I am President of the Council of State Administrators of Vocational Rehabilitation. I am also Director of the Washington State Blind Agency.

With me today are Lamona Lucas, who is with the Alabama Combined Agency, and Jerry Starkweather, Director of the Iowa General Agency. They are seated behind me.

CSAVR is 82 men and women in every State and Territory who administer the service programs authorized under the Rehabilitation Act for citizens with a broad range of physical and mental disabilities. We are honored and proud to carry out the programs that the Congress has established and funded, to provide opportunities for independence and productivity for citizens with disabilities.

We come before you today greatly concerned about the disarray in the national rehabilitation program created by the Department of Education.

I would like to cover four items.

First, as you have discussed, the Department of Education has left RSA, the Rehabilitation Services Administration, ill-equipped to perform basic functions let alone critical responsibilities. The mandate of Congress in staffing positions a year later is left undone—not just in the number filled, but where they are assigned and which program responsibilities they respond to—a wide array of responsibilities left largely untended.

Specific key positions, such as regional commissioners, who are prime links to States for technical assistance—four out of ten positions are vacant.

The second point, the Department of Education has placed a low priority on technical assistance to States, the training needs of existing service delivery staff, and other responsibilities crucial for the continuing development of quality rehabilitation programs. We have coming through our doors people with severe disabilities who come for the promise of rehabilitation. The people who come today are different, in some respects, than those who came 5 years ago.

It is critical that we have the resources, the support, the technical assistance and the training to do our job well today, 5 years ago, and 5 years from now. There are responsibilities of our Federal partner that underscore that. They have received a very low priority.

Third, the Department of Education has stalled implementation of the Title VI Supported Employment State Service Grant Program and attempted to excuse that program by saying that States are not ready or are not willing. I do not point fingers. I want to state the record.

The Department of Education opposed these provisions in the 1986 Amendments. They requested no funds for fiscal year 1987. They proposed that fiscal year 1987 funds be rescinded. They recommended that no funds be appropriated for fiscal year 1988. They delayed allocation of fiscal year 1987 funds until regulations were written, while at the same time releasing other money within OSERS in other programs that did not have regulations. We inquired many times to you and others about the release, so that we could start serving people.

One of the inquiries we made was to the person in the Department of Education charged with monitoring the movement of regulations and found that no officials in the Department of Education had contacted that office to indicate there was any priority on the movement of those regulations.

This record included statements to the Senate Appropriations Subcommittee that these delays were necessary because States were not ready to handle these funds. We were very pleased that the Subcommittee responded to urge immediate release and in fact indicated that it seemed to be an attempt to subvert the intent of Congress.

We have heard today that the Assistant Secretary has questioned the commitment of the States to carry out this exciting new authority. The record. In 1985, over 45 States submitted extensive applications for demonstration authority funding to do "systems, Statewide change" to implement supported employment programs in their State. Those applications required extensive collaboration with other programs and firm commitments on the part of the States to change systems. Forty-five States.

To this date, 27 States are in the process of implementing those statewide change programs. Those who did not receive demonstration money, many are proceeding without it. Over 6,000 individuals with severe and multiple handicaps have and are being served in this manner in those and other States.

Every State in the Nation has an approved State plan, required by law, to implement the State grant service program. We have been and we are ready, willing and able to get on with serving disabled people through this exciting new authority.

The question was raised earlier about why we were not participating in a particular telecast. What is needed is partnership to implement, aggressively implement, services through the State grant program, not a continuing series of Federal initiatives that are presented as challenges to our commitment.

The fourth point. The Department of Education has systematically curtailed and thwarted the authority of the Presidentially-appointed Commissioner of Rehabilitation Services, as he has attempted to restore full, aggressive implementation of all facets of the Rehabilitation Act and to restore rational, cooperative relationships with all elements of the rehabilitation and disabled community.

The challenges of meeting the responsibilities of last year, we have heard described in detail today. Those challenges could have been better met if the resources and talents of the Commissioner of Rehabilitation Services had been let loose to work cooperatively. Those challenges could have been better met if the resources and talents in State agencies could have been used to help develop and formulate the drafts and ideas of those regulations. We offered that repeatedly, publicly, and on the record to the Assistant Secretary, and we were rejected, out-of-hand, that that involvement was inappropriate.

We believe that the Commissioner of Rehabilitation Services in law is important for the integrity of the program that the responsibilities of that office are executed. Without that, we have shadows. We have shadows that present offers to be involved in something that are specific rehabilitation responsibilities. The rehabilitation engineering task force—it is our understanding that the Commissioner of Rehabilitation Services, well into last year, wanted and was planning to proceed with a task force of his own to implement the rehabilitation engineering provisions. He was stopped. He was not allowed to proceed with that.

Instead, months later, what occurred was a task force created by OSERS that at its first meeting entirely addressed implementation of the Rehabilitation Act. We want to implement the act. We want to go forward with the program. We have proceeded to work directly with RESNA and other organizations on these issues. But we would really fear a series of task forces on older/blind implementation, on deaf interpreter implementation, on this, on that, and on the other thing, that are created by OSERS. If that is what Congress intended, it would have written the Rehabilitation Act that way. What it wrote—and we are very pleased to administer a program that—at the Federal level and each State, disabled people know where to look for accountability that this program is working. It is to the State agency director, and we answer to that, and at the national level, it is to the Commissioner of Rehabilitation Services, and he or she should answer to that. That is a very important point for accountability in this program.

We are greatly concerned about the disarray in the national rehabilitation program. We are concerned because we care about the opportunities for citizens with disabilities, and we believe that this disarray hurts people who deserve better. We have attempted to work with Department of Education officials in the last few years, and Mr. Chairman, we have been met with distance, with disdain, and with disrespect, for the law, for programs that have existed and do exist, for professionals and for the needs of many disabled people.

Our many offers of cooperation as a partner have been left unanswered or rejected or attacked.

Because of this, we did go to the Secretary of Education, and we have written letters saying we want to work with the authorized official.

If those have appeared to be uncooperative, please understand our frustration in being on the firing line to deliver services and finding a disarray that makes it impossible to know on Monday what the score is if you have not called in, and even then you do not know. We have said enough is enough; let us have some accountability. And we went to the law.

Our inquiry, our letter, to the Secretary of Education was blunt and it was frank and it asked for attention. It was dismissed.

We pursue these concerns with the hope and trust that they can and will be addressed. What needs to be done? Is unity possible?

First, there needs to be recognition that there are serious concerns and problems. These are the most important thing for us to pay attention to, because our programs and the effective delivery of services relies on cooperation; if we do not solve this, we are left to nit-pick and fight on issues that should be consensus.

And there needs to be a firm commitment by the Department of Education to full, aggressive implementation of all programs and services authorized under the Rehabilitation Act; a respect for the legitimate needs and rights of all citizens with disabilities.

There needs to be, second, full authority under the Rehabilitation Act restored to the office of Commissioner of RSA. We need accountability that is clear, not deniability through bureaucratic shadows.

And third, positive, constructive leadership to create cooperation, to fully implement the law—State/Federal partnership, consumers and providers, and all disabled groups and organizations.

We are ready, we are willing, and we are eager to assist in any way that we can to restore these fundamental principles to the national rehabilitation program.

Finally, today there has been some question raised about the issue and whether we are in fact interested in and capable of working with and for severely handicapped people. On Monday of this week, I asked some State directors if they could produce—and I said it has to be in 24 hours—letters from organizations in their States of severely handicapped individuals, developmentally disabled, mentally ill, physically handicapped, deaf, blind, whatever, that would indicate is there is a positive working relationship with you and your State agency in the interest of severely handicapped people. In 24 hours, 139 letters from over 30 States came in.

Mr. Chairman, I have finished my testimony.

[The prepared statement of Mr. Dziedzic follows:]

STATEMENT OF
THE COUNCIL OF STATE ADMINISTRATORS
OF
VOCATIONAL REHABILITATION
BEFORE
THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

Paul Dziedzic
President
Council of State
Administrators of
Vocational Rehabilitation

October 8, 1987

The Council of State Administrators of Vocational Rehabilitation (CSAVR) is an association comprised of all of the chief administrators of the public rehabilitation agencies providing services to persons with mental and/or physical disabilities in the fifty states, the District of Columbia, and our Nation's territories.

These Agencies constitute the State Partners in the State-Federal Program of Rehabilitation Services, as provided by the Rehabilitation Act, as amended. This 67 year-old Program is the major resource for, and the State Rehabilitation Agencies are the primary providers of, rehabilitation services to our Nation's citizens with disabilities.

Since its inception in 1940, the CSAVR has enjoyed a quasi-official status as an active advisor to the Federal administrators in the formulation of national policy and program decisions and has been an active force in strengthening the effectiveness of service programs for individuals with disabilities.

The Rehabilitation Program is a State-Federal Partnership Program.

Under the Rehabilitation Act, the Federal Government, through the Rehabilitation Services Administration, is charged with the responsibilities for the promulgation of regulations; the provision of technical assistance to service providers; the collection of National statistics on the delivery of services; the evaluation of all Rehabilitation Programs; and with monitoring and providing technical assistance.

Under the Act, the States are charged with providing -- directly and/or through contracting with other public or private agencies -- services to eligible persons with mental and physical disabilities.

Through cooperation and commitment, the Federal Government and the States work to create a National Program designed to serve the diverse needs of our Nation's citizens with disabilities.

For the State-Federal Rehabilitation Program to be successful, it must have three main pillars to support its effective operation.

It needs (1) sound enabling legislation, (2) adequate resources, and (3) effective Leadership.

This Statement will evaluate the current effectiveness and strength of these three pillars.

THE REHABILITATION ACT

The Rehabilitation Act, re-authorized and strengthened one year ago by the enactment of Public Law 99-506, "The Rehabilitation Act Amendments of 1986," is recognized by most observors as the most complete and well-balanced legislation in the human services field.

The pillar of "sound enabling legislation" is strong.

The primary focus of the Act is to provide services to persons with mental and/or physical disabilities, enabling them to re-enter the workforce or to obtain employment for the first time, to become independent of public assistance. The provision of these services results in a direct savings to government, as competitive work generates increased tax revenue, and as decreased dependence saves public assistance and other expenditures.

Through the Rehabilitation Act, State Rehabilitation Agencies operate programs which:

-- Provide comprehensive and individually-tailored Rehabilitation services annually to over 900,000 persons with physical and/or mental disabilities, 63 percent of whom are persons with severe disabilities. This is the Basic State Grants Program, funded in FY 1987 with $1,281 million Federal dollars;

-- Provide comprehensive independent living services to persons who "do not presently have the potential for employment." In FY 1986, this newly-funded Program served over 7,000 persons, and received $11.8 million in Federal funds;

-- Provide independent living services to Older Blind Individuals, funded in FY 1987 with 5.3 million dollars; and

-- Provide Supported Employment Services to persons with severe disabilities "for whom competitive employment has not traditionally occured." This is the newly-enacted State Supported Employment Grants Program, funded for the first time last week, on September 30, 1987, with $25 million in FY 1987 monies.

In the Rehabilitation Act, provisions are also included for an innovation and expansion program; a training program; a Research Program administered through the National Institute on

Disability and Rehabilitation Research; a special projects program; a Projects with Industry Program; a National advisory council; and a rehabilitation facilities program.

"THE REHABILITATION ACT AMENDMENTS OF 1986"

On October 21, 1986, President Reagan signed into law Public Law 99-506, the "Rehabilitation Act Amendments of 1986."

This Statement will focus on several key aspects of this Act, and on the status of the Department of Education's implementation of its provisions.

In the 1986 Amendments to the Rehabilitation Act, provisions were enacted which, if properly implemented, will:

-- Provide an adequate increased base to enable the State-Federal Rehabilitation Program to serve an ever-expanding universe of persons with mental and/or physical disabilities. The best estimates indicate that limited resources allow for only one in twenty eligible persons with disabilities to be served;

-- Provide expanded opportunties for the use of Rehabilitation Engineering technologies to be used to assist persons with disabilities in their efforts to become employed;

-- Create a new State Supported Employment Services Program, in which State Rehabilitation Agencies will work collaboratively with other Public and Private Entities to provide needed Supported Employment Services to persons with severe mental and/or physical disabilities "for whom competitive employment has not traditionally occured;"

-- Provide that Staffing levels at the RSA "shall be in sufficient numbers to meet program needs and at levels which will attract and maintain the most qualified persons;" and

-- Strengthen and expand the role and responsibilities of the Commissioner by:

o requiring that the Commissioner be "an individual with substantial experience in rehabilitation and in rehabilitation program management;"

o authorizing the Commissioner to "provide monitoring and conduct evaluations;"

o authorizing the Commissioner to "appoint such task forces as may be necessary to collect and disseminate information in order to improve the ability of the Commissioner to carry out the provisions of the Act;"

o mandating the Commissioner to "evaluate all the programs authorized by the Act;" and, among others, by

o authorizing the Commissioner to "provide technical assistance to State rehabilitation agencies and rehabilitation facilities."

STATUS OF THE IMPLEMENTATION OF THE 1986 AMENDMENTS

The Council of State Administrators of Vocational Rehabilitation strongly and fervently believes that the implementation of the Rehabilitation Act Amendments of 1986 -- in fact, the Federal implementation of the Rehabilitation Program -- is so inadequate that it has put this Program, and the millions of persons with disabilities who rely on this Program -- at risk.

The Council, and its Members, do not take this view lightly.

It is articulated as the common view of individuals who have dedicated their lives to serving persons with disabilities, and to creating and expanding opportunities for independence and productivity through employment.

As Officials charged by law with the responsibility for the provision of Rehabilitation Services to persons with disabilities, we have an obligation to speak.

The very existence of our Agencies as the state component of the State-Federal partnership means that we have a deep and intricate program involvement with persons with disabilities, with volunteer groups, and with public and private facilities which assist in the provision of rehabilitation services.

Through the provisions of the Rehabilitation Act -- its authorities and funding provisions -- the manner in which the

States administer these Programs and utilize available resources affects the service delivery programs of many other agencies and groups, and the quality of Rehabilitation Services to persons with mental and/or physical disabilities.

This is cited to emphasize the deep sense of responsibility we have as being the State Partners in the Federal Program in seeking to implement the law which the Congress has given to the American people, and to translate it to meaningful services that will reach our Nation's citizens with disabilities.

In the States, we can only accomplish our mission with the collaborative program efforts, support, cooperation, and unselfish Leadership of all of these others in the field.

This includes the Federal Government.

With this framework, the following are the CSAVR's comments on the Department of Education's implementation of the 1986 Amendments, particularly with respect to the State Supported Employment Service Program, RSA Staffing Levels, and the expanded role and responsibilities of the RSA Commissioner:

STATE SUPPORTED EMPLOYMENT SERVICES

Nearly one year ago, the Congress enacted into law a new State Supported Employment Service Program, under Part C, Title VI, of the Rehabilitation Act.

Since that time, the Department has used every conceivable tactic to delay the implementation of this Program.

Although it is inconceivable, it is nonetheless true, that the Department of Education is asking the Congress, our colleagues, and persons with disabilities and their Advocates, to believe that the States are the ones who cannot or do not want to implement this most important Program.

Yet, Mr. Chairman, as you are well aware, the Department itself has:

o Opposed the provision in the 1986 Amendments establishing the State Supported Employment Services Program;

o Requested that no funds be appropriated for this Program in FY 1987;

o Proposed that the funds Congress appropriated in FY 1987 be rescinded;

o Recommended that no funds be appropriated for this Program in FY 1988;

o Delayed the allocation of FY 1987 monies to the States until September 30, 1987, the very last day of the Fiscal Year; and

o In a statement before the Senate Appropriations Subcommittee by the Secretary, blamed the delay on the States being "not ready to handle" the funds.

The Committee responded to the Secretary by producing a letter from the CSAVR urging for the immediate release of the funds, and by stating, in Report Language, that the delay seems to be an attempt to "subvert the intent of the Congress."

There is evidence that, as of today, over six thousand persons with severe mental and/or physical disabilities are being served in State-run Supported Employment efforts across the Nation, and that they are being served with State monies or demonstration project funds.

In addition, every State in the Nation has an approvable "State Plan," required by law, to implement this Program.

It is sadly ironic that State Rehabilitation Agencies are being portrayed as the major impediment to efforts to implement this important new Program; especially when the Department's track record -- of delay, rescind and eliminate -- is fully understood.

STAFFING LEVELS AT THE REHABILITATION SERVICES ADMINSITRATION

In order for the State-Federal Partnership to be effective, the Federal Rehabilitation Services Administration must be adequately staffed by qualified, experienced professionals.

In 1981, the Rehabilitation Services Administration had 137 Staffpersons, to oversee the allocation of $858 million.

In November, 1986, it had 80. More than one of every three positions was lost.

During the same period of time, Federal Appropriations for the Rehabilitaton Program increased from $858 million to $1,281 million, an increase of nearly fifty percent.

A similar reduction in staff has occured in the RSA Regional Officies, which if operating professionally, should serve as the focus of a most productive interaction between the State and

Federal partners.

It is from these Regional Offices that the States receive the technical assistance required to enable the full implementation of the law. Four of the ten Regions have "Acting Commissioners," and two others are ready to retire. Competent staffpersons have left in droves, partly because they were not allowed to travel to States to provide technical assistance, because they are poorly informed, and, in short, because they have not been able to fulfill the responsibilities of their jobs.

The 1986 Rehabilitation Act Amendments directed the Secretary to "take such action as necessary to ensure that the staffing of the Rehabilitation Services Administration shall be in sufficient number to meet program needs and at levels which will attract and maintain the most qualified personnel."

Since the enactment of this provision, the following has taken place:

- o The downgrading of twenty-five positions in the RSA, making less attractive, and thus harder to fill, key professional positions;
- o New professional staff have still not been hired;
- o Few, if any new staff positions have been designated for the Basic State Vocational Rehabilitation Program; and
- o Four Regional Commissioner positions remain vacant.

The severe lack of adequate professional staff at the Rehabilitation Services Administration has impeded the RSA's ability to complete Regulations to implement the 1986 Amendments.

Several aspects of the 1986 Amendments serve to make the States even more responsive to the needs and concerns of our consumer and community-based organizations with whom we share responsibilities for Programs for persons with disabilities in our States.

States are now carrying out important aspects of the 1986 Amendments -- such as provisions requiring Public Hearings and provisions affecting the application of due process for persons served by State Agencies -- without the benefit of even "proposed" Regulations.

The Program of Independent Living Services for Older Blind Individuals, first funded in 1985, has never had Regulations.

These critical lapses -- caused by the failure of the Department to maintain and obtain additional, qualified, professional staff -- are directly impacting on the provision of quality services to persons with disabilities.

AUTHORITY OF THE RSA COMMISSIONER

Despite clear statutory evidence to the contrary, it is sad to report that over the past year, every conceivable effort has been made to weaken and undermine the authority vested by law in the Commissioner of Rehabilitation Services.

Eight years ago, the CSAVR led efforts to have the Congress create the Office of Special Education and Rehabilitative Services within the Department of Education. The CSAVR believed that all persons with disabilities would be best served by this coordinated approach.

At the same time, we successfully fought to maintain the integrity of each of the Program Units within the OSERS -- again, for the benefit of children and adults with disabilities in the States.

The law is quite specific that the Rehabilitation Services Administration is to be headed by a Commissioner. It is equally specific in stipulating that the RSA shall be the principal agency for carrying out the functions of the Act, and that the Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.

Mr. Chairman, we urge this Subcommittee in these Oversight Hearings to call upon the Department of Education to demonstate its good faith in compliance with Federal Law for delegation of functions to the Commissioner of the Rehabilitation Services.

Current administrative practices prevent the Commissioner from exercising the direct authority vested in that Office by law.

The CSAVR has taken its concerns in these matters to the highest levels of the Department of Education.

The Secretary of Education has virtually ignored these pleas.

In contrast, even before taking Office, in a true example of Federal-State Partnership, the current Commissioner visited all of the fifty states and sought the input of State Officials and other Public and Private Leaders in the States, and displayed sincere commitment to understanding the Rehabilitation Programs, its needs, and those of persons with disabilities.

The current Commissioner has recognized that State Rehabilitation Agencies are constituents of his Office and has tapped the dedication and first-hand knowledge in the States to strengthen an almost non-existent State-Federal Partnership.

Unfortunately, the Commissioner's efforts have been met from within with resistence and denial. Not from any segment of the Rehabilitation/Disability Community, but from the Department.

This negativism coupled with a very narrow focus, indicates a lack of understanding of the breadth of the Rehabilitation Act, and of Federal-State mission to provide services to individuals with all disabilities.

Its impact on individuals with disabilities is devastating.

We see disability group pitted against disability group; advocacy group against advocacy group; and a general lack of trust and cohesiveness that must be present in order to enable programs for persons with all disabling conditions to succeed in the States.

State Rehabilitation Agencies, their Directors and Professional Staff, are not newcomers to efforts to serve persons with disabilities. Individually and through the Council, State Agencies have fought for these Rehabilitation Programs and, with increased knowledge and technology, have moved to the very edge of the realization of our dreams, a society in which all persons with disabilities can participate fully in society.

Had the Commissioner's efforts been allowed to flourish, the pillar of Federal Leadership would be strong and effective. Now, it is weakened.

As the stewards in the States of the $1.3 billion State-Federal Rehabilitation Program, we stand ready to meet and deal head-on with any of these problems, under the Leadership of the Commissioner.

All the CSAVR asks of this Subcommittee is that it hear our concerns, and that it work to ensure that the Department of Education respects and fully commits itself to the implementation of the Rehabilitation Act -- its intent and provisions -- for all persons with disabilities.

Only then can its promise be fulfilled.

The CSAVR asks that the Subcommittee work to ensure that this State-Federal Partnership become a functioning reality, and that this effort includes the recognition and respect for the authority of the RSA Commissioner, pursuant to the law and the intent of the Congress.

The CSAVR wants only to have a positive, cooperative relationship between the States and the Federal Leadership, providers and consumers, and all groups representing persons with disabilities.

This is needed for the benefit of all persons with disabilities in this Nation.

Senator **Harkin**. I know I said I would not ask you questions until the panel was completed, but I want to make a comment or observation.

I may have been a little hard on you, Mr. Dziedzic, when I was talking to the Assistant Secretary and the Commissioner. But I want you to know that I can well understand your frustration. You have outlined in here what has happened at the Department, their opposition, their zero-funding, the rescissions. As you pointed out, in 1981, RSA had 137 staffpersons to oversee $858 million. As of last year, it had 80, and I do not know how many it has got now, but not a heck of a lot more—and yet, the funding has gone to $1.2 billion.

I can only tell you how frustrated I am with this attitude that somehow you can administer this program without professional people; that somehow, even with more money, we can do it with less, maybe half, maybe a third, of the people we had before. No one likes bureaucracies, but especially when you are dealing with disadvantaged individuals, it takes personnel and professional personnel to carry out the mandates of the law. And in that regard, I think you are right on target, and I can really understand your frustration.

Mr. **Dziedzic**. Thank you, Senator.

Senator **Harkin**. Thank you.

Mr. Williams.

[Mr. Williams' testimony delivered by Mr. Records and through voice-generated device.]

Mr. **Williams**. Thank you for giving me this opportunity to come before you today.

In a minute, I will do something which I have never done before, and that is to raise my own voice for what is in effect my own voice, to discuss those issues and concerns which, as a disabled person, I feel most strongly about.

Today, I am testifying on behalf of organizations who represent parents, professionals, and, first and foremost, persons with the most severe disabilities.

Whether a parent, professional, provider, or consumer, we share a common vision—of a nationwide system of early intervention and family support services that responds to needs on an individualized basis; of children with the most severe disabilities being educated with their nonhandicapped peers; and of adults with the most severe cognitive and physical impairments working in the community.

We share also a common set of values that emphasizes the abilities of children and adults with the most severe disabilities. We believe in the fundamental benefit of integration in the school setting, in the work place, and in the community.

Securing full citizenship for persons with the most severe disabilities will depend on the efforts of Congress, all Americans with disabilities and others to continue to seek change in our educational and rehabilitation systems to stimulate opportunities for integration and independence.

I want to commend the members of this Subcommittee and the Congress for your leadership in securing the passage of major amendments to the Rehabilitation Act and Education for the

Handicapped Act. New Federal mandates for supported employment, rehabilitation technology, early intervention and preschool education will benefit children and adults with the most severe disabilities and their families.

The promise of these new mandates will rectify years of neglect by many States of individuals with the most severe impairments. For many years, these individuals remained unserved by the education and rehabilitation systems.

Congress in 1986 recognized and responded to critical unmet needs. I have seen the benefits of early intervention in my own life. I have also seen the cumulative toll that years of benign neglect and sometimes not so benign neglect have taken on others' lives.

I can tell you there is no comparison. And I dare say the most important thing you can do as a United States Senator is to make sure that the Part H Program works and works well.

In 1987 and future years, this Subcommittee and the Congress must focus public attention on the critical issues of service delivery, including personnel development, replication of best practices, and oversight of State and Federal implementation efforts.

Passage of significant amendments last year to EHA and the Rehabilitation Act put massive responsibilities on OSERS' staff in a tight timetable. We believe the OSERS staff have worked hard to implement these new Congressional mandates.

Although opposed by the Administration throughout the authorizing and appropriations processes, part H, early intervention and title VI, supported employment funds are now flowing to the States. All 50 States and the District of Columbia have responded to OSERS' guidelines and submitted plans to participate in partnership with the Federal Government to establish Statewide early intervention programs.

Proposed and final supported employment regulations have been issued, and all States have acted to establish supported employment programs.

Although much more needs to be done, the States have begun implementing these two important laws. We still look to OSERS and to the Department of Education for further regulations that re-emphasize the intent of Congress to authorize the use of title I basic grant dollars for supported employment, to link supported employment to employability, and to further explain the use and scope of rehabilitation technology services.

It is also vital that regulations be published to implement the Early Intervention State Grant Program. The Congress should not allow any further delay by the Department of Education in promulgating all the regulations required by the two acts.

The 1986 Amendments to the Rehabilitation Act and the Education of the Handicapped Act provide only initial funding and a blueprint for action by the States. Moreover, the goals of new programs will only be realized if Congress meets its commitment to fund the early intervention, early childhood, and supported employment initiatives to their full authorization levels.

It is also critical that Congress continues its oversight authority to monitor the progress of the States and Federal Government in implementing these vital initiatives.

The rehabilitation system in America is over 60 years old. Amendments that were championed last year by members of this Committee will result in major changes in how services are delivered to youth and adults with the most severe disabilities.

I know from my own personal experience why these changes are necessary. My early encounters with DVR were trying and humiliating ones. I remember one VR counselor once suggested to me that the best I could hope for in terms of life after school would be to work in a sheltered workshop. I have little doubt that had I been a bit more disabled, less knowledgeable about my rights, or less assertive about what I wanted out of life, that the DVR might not have served me at all.

But my persistence paid off. Connecticut VR finally came through for me and paid a large percentage of my college costs. And I am, of course, very grateful that this assistance was made available to me.

We are still concerned that there are some individuals who are reluctant to change. Madeleine Will is working hard with her staff to implement these amendments. We are counting on you, Mr. Chairman, and Members of this Subcommittee, not to turn the clock back on individuals with the most severe disabilities.

Mr. Chairman, I appreciate this opportunity to address you today. It is vitally important that more Americans with disabilities are given increased opportunities to take part in this ongoing policy dialogue, if we are to succeed in our efforts to integrate people with the most severe disabilities into the mainstream of American life.

Your sensitivity and commitment to respond to our unmet needs has provided thousands of individuals and their families with new hope and expectations. We look forward to your continued leadership.

I would be pleased to respond to any questions.

Thank you.

[The prepared statement of Mr. Williams follows:]

STATEMENT

RESPECTFULLY SUBMITTED

TO THE

SUBCOMMITTEE ON THE HANDICAPPED

ON THE LABOR AND HUMAN RESOURCES COMMITTEE

ON OVERSIGHT HEARING ON THE

THE REHABILITATION ACT OF 1986 P.L. 99.506

THE EDUCATION OF ALL HANDICAPPED CHILDRENS ACT P.L. 99.457

THE HANDICAPPED CHILDRENS PROTECTION ACT P.L. 99.372

Presented by

Robert R. Williams
Program Analyst
Pratt Monitoring Program
District of Columbia Association for Retarded Citizens

On Behalf of

American Association of University Affiliated Programs
American Occupational Therapy Association
Association of Retarded Citizens
Epilepsy Foundation of America
National Association of Protection and Advocacy Systems
National Association of State Mental Retardation Directors
National Easter Seal Society
The Association for Persons with Severe Handicaps
United Cerebral Palsy Associations

Today, I am testifying on behalf of organizations who represent parents, professionals, and first and foremost persons with the most severe disabilities. Whether a parent, professional, provider, or consumer, we share a common vision:

- o of a nationwide system of early intervention and family support services that responds to needs on an individualized basis;
- o of children with the most severe disabilities being educated with their non-handicapped peers;
- o of adults with the most severe cognitive and physical impairments working in the community with the appropriate support services such as assistive devices, attendant care and job coaches.

We also share a common set of values that emphasizes the abilities of children and adults with the most severe disabilities. We believe in the fundamental benefit of integration in the school setting, in the work place and in the community. Securing full citizenship for persons with the most severe disabilities will depend on the efforts of Congress, all Americans with disabilities and others to continue to seek change in our educational and rehabilitation systems to stimulate opportunities for integration and independence.

I want to commend the members of this subcommittee and the Congress for your leadership in securing the passage of major amendments to the Rehabilitation Act and Education for the Handicapped Act. New federal mandates for supported employment, rehabilitation technology, early intervention and preschool education will benefit children and adults with the most severe disabilities and their families. The promise of these new mandates will rectify years of neglect by many states of individuals with the most severe impairments. For many years these individuals remained unserved by the education and rehabilitation systems.

Congress in 1986 recognized and responded to critical unmet needs. I have seen the benefits of early intervention in my own life. I have also seen the cumulative toll that years of benign neglect and sometimes not so benign neglect have taken on others' lives. I can tell you there is no comparison. And, I dare say the most important thing you can do as a United States Senator is to make sure that the Part H Program works and works well. In 1987 and future years this Subcommittee and the Congress must focus public attention on the critical issues of service delivery including personnel development, replication of best practices, and oversight of state and federal implementation efforts.

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Rehabilitation Act put massive responsibilities on OSERS' staff in a tight timetable. We believe the OSERS' staff have worked hard to implement these new Congressional mandates. Although opposed by the Administration throughout the authorizing and appropriations processes, Part H - early intervention and Title VI - supported employment funds are now flowing to the states. All fifty states and the District of Columbia have responded to OSERS' guidelines and submitted plans to participate in partnership with the federal government to establish statewide early intervention programs. Proposed and final supported employment regulations have been issued and all states have acted to establish supported employment programs.

Although much more needs to be done, the states have begun implementing these two important laws. We still look to OSERS and the Department of Education for further regulations that reemphasize the intent of Congress to authorize the use of Title I basic state grant dollars for supported employment, to link supported employment to employability and to further explain the use and scope of rehabilitation technology services. It is also vital that regulations be published to implement the Early Intervention State Grant program. The Congress should not allow any further delay by the Department of Education in promulgating all the regulations required by the two Acts.

The 1986 Amendments to the Rehabilitation Act and the Education of the Handicapped Act provide only initial funding and a blueprint for action by the states. Moreover, the goals of the new programs will only be realized if Congress meets its commitment to fund the early intervention, early childhood, and supported employment initiatives to their full authorization levels. Many states, such as California have conditioned their participation in the early intervention program on full federal funding. It is also critical that Congress continue through its oversight authority to monitor the progress of the states and the federal government in implementing these vital initiatives.

The rehabilitation system in America is over sixty years old. Amendments that were championed last year by members of this Committee will result in major changes in how services are delivered to youth and adults with the most severe disabilities. I know from my own personal experience why these changes are necessary. My early encounters with DVR were trying and humiliating ones. I remember one VR counselor once suggested to me that the best I could hope for in terms of life after school would be to "work" in a sheltered workshop.

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Mr. Chairman, I appreciate this opportunity to address you today. It is vitally important that more Americans with disabilities are given increased opportunities to take part in this ongoing policy dialogue, if we are to succeed in our efforts to integrate people with the most severe disabilities into the mainstream of American life.

Your sensitivity and commitment to respond to our unmet needs has provided thousands of individuals and their families with new hope and expectations. We look forward to your continued leadership.

Senator **HARKIN**. Thank you very much, Mr. Williams, and I will have some questions.

I have to say—I am very interested in assistive technology; I am doing some study in that area—that is the best voice-generated device I have ever heard. That must be something new. That is the best I have ever heard—even though it may break down from time to time.

Dr. Vanderheiden.

Dr. **VANDERHEIDEN**. Good morning.

My name is Gregg Vanderheiden, and I am Director of the Trace Research and Development Center at the University of Wisconsin-Madison, a rehabilitation engineering center looking at communication, control and computer access.

I am also the Secretary-elect for RESNA, the Association for the Advancement of Rehabilitation Technology, and I am here today speaking for RESNA.

In the interest of time, I have prepared written comments which I have submitted in advance for the record, and I am going to limit my comments here to just one or two highlights, which I am sure you will appreciate.

Senator **HARKIN**. Thank you.

Dr. **VANDERHEIDEN**. First, I want to say that the inclusion of rehabilitation technology language in the legislation has been very useful. What we have found has been that when rehabilitation technology has not been specifically listed, it generally is not covered in programs and funding. We are now finding that because of the inclusion of specific language, we are beginning to see a change.

For example, in the past, therapy or surgery would be covered but not a technical aid. If a young child had no means of speaking and there was some type of surgery that could be done that would allow him to speak, there was no problem getting the surgery funded—$5,000, $6,000, $8,000, $10,000—it would be approved. Or if therapy could be used to restore speech for an individual, again there would be little problem with funding, as long as it is reasonable. Giving someone their speech is worth a lot. However, if speech therapy and surgery could not give an individual speech, a $1,500 aid or even a $500 aid which could give them the ability to speak was usually not covered and was systematically excluded as a treatment option.

We are now seeing that situation slowly change. It is however only beginning what is a slow change. We need to reach a time when rehabilitation technology is seen as one of the viable, fundable approaches that is considered when looking at rehabilitation.

Specifically mentioning rehabilitation technology services has also been very important. We have seen cases where technology is provided with none of the followup and training, required for its successful placement. If you gave somebody an artificial leg and did not work with them on how to use it, they would not be able to walk well at all. Yet with other types of rehabilitation technologies, especially the advanced electronic ones, there is a belief that if you just put the transistors in front of a person with a disability, it will give them the ability to talk, write, do whatever else.

We have seen a device this morning that Bob has been using to help him express his thoughts; a sophisiticated computer based system. However, for all the transistors in the aid, the output we heard was solely a function of Bob's thoughts and his skill at using the aid. The hardware is only half the solution, providing the skills must also be done.

Another area of need is better training in the application of technologies. Technology is not a cure-all. Technology is not always needed. It is not always effective. It takes training, and a lot of expertise to be able to identify where and when it should be applied. It is very easy to recommend technology. It is very hard to apply it well and to be able to figure out when, and when it is not indicated.

This means that we need trained and experienced personnel in the service delivery system. Yet we do not have training systems set up to provide that, and there are very few experienced personnel in the field when compared to the tremendous need.

There is currently a wide range of technologies available, though there is need for continued improvement. Earlier I passed forward just one book on Rehabilitation Technology. This is one of three books covering one-half of one area of one REC out of 13 REC's. You will find in here hundreds—actually, close to one thousand—different specialized adaptations and programs for just the area of computer access and communication.

Proper application takes time and training. But when properly done, we have seen tremendous things accomplished. We are not just talking about making things a little nicer for someone with a disability. We are talking about really enabling people, individuals, even with very severe disabilities, to secure and hold down jobs.

Recently, in talking with some people at IBM, one of the programmers commented that, the best programmer de-bugger they have is blind and has binaural hearing aides. There are also people heading up departments and sections at companies and agencies who have severe handicaps. These are not people given jobs through affirmative action; we are talking about individuals who are in there, doing the job, and some of them, like the programmer at IBM, being paid a lot more than many of us in this room.

The technologies and the potential are there. A primary need at this time however is really specially-trained personnel to effectively apply the technologies. This is especially a problem in rural areas and other low population density areas. We currently have a situation where you can only get some rehabilitation technology services in a few places, usually at large programs, or centers. The disabled population however is not distributed just around the centers. In fact, one study looked at severe communication impairments, and found there were more people (per capita) in rural settings than there were in urban settings—which is the reverse of what we would expect. Normally, we would expect to find that the people with severe disabilities would migrate to urban centers.

Some initial action has been taken in the training area, as you know, and it is being felt. However, these efforts use just initial, and the problem is massive, especially in this personnel area.

In closing, RESNA feels that Congress' continued leadership and review in this emerging area is very, very important. We also very strongly support a proposal for general hearings on rehabilitation technology.

Thank you very much for the invitation to comment this morning, and we welcome any questions you may have.

Senator HARKIN. Thank you very much, Dr. Vanderheiden.

[The prepared statements of Dr. Vanderheiben and RESNA, follows:]

Testimony before Senate Subcommittee on the Handicapped
October 8, 1987

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Thank you very much for the invitation to comment this morning, and we welcome any questions you may have.

Dr. Vanderheiden. There were two areas you mentioned. One of them had to do with information and the other one had to do with expertise, I believe. First, there is getting information to consumers. This area is very weak. Consumers will not go to clinicians to get aids that they need if they do not know such aids exist. Similarly, parents need to be aware of what is possible, as do family physicians. Often, parents are told by a doctor that there is nothing more that can be done for a child, even though there may be a special rehabilitation technology program in the same city – or even the same building.

There is a real information problem. Part of it is awareness, and part of it is having the information assembled and in identifiable locations so that when people do have a questions, they have a place to go.

So one area that the government should address is providing consistent and substantial commitment toward information.

Information has always been sort of a lost child. This is due to several factors. First, it is not research in nature, and therefore looks more like a local than federal concern. Yet it must be coordinated on a national level to be effective or cost effective. Secondly, most people think that information costs little to generate and little to dispense. Third, nobody is willing to pay anything for information. Parents do not expect to call up and be charged $10 at the end of a phone call to ask a question.

So solid, consistent (not on-again, off-again) substantial funding on a federal level is needed in this area. This is a tough area, and one that does not go away But it is a critical area as well.

The other area of need that I think you touched on was service delivery systems. This training has got to come from a number of places. We can try to build it into our programs on the college level, but unfortunately it is hard for professors to teach topics that were not taught when they went through school, or for which they have no clinical experience. As a result, progress in this area is slower, but progress is being made.

We also need to be looking at ways of getting good clinical expertise into the training process. Some things that could be done would include setting up good clinical settings, getting some quality control systems in place, and setting some model centers up which can then be used as practicum bases for generating more.

Mr. Silverstein. What is your understanding of the way things are working in New York and Minnesota with the task forces that have been specifically set up? Is there a lot that we might learn from their experiences/

Dr. Vanderheiden. Both of them have generated a lot of very good information and are models for pro-active participation and work in this area. So yes, definitely, I think you should be looking at them.

Mr. Silverstein. What is your feeling about – are different Federal agencies addressing the issue of rehab technology better or worse than others? Is this another example where we are going to need to look at interagency coordination not only at the local but the State and Federal level as well?

Dr. Vanderheiden. Very much so. I think rehabilitation technology in particular is a topic which cuts across ages, disabilities, and settings. Many people even say it should be called "rehab-education technology" or some other new word that we invent and put into our dictionary, to reflect its cross-area application. It cuts across children and adults, it cuts across work, educational, home, and community environments. As our society becomes more technical, it is not only allowing some disabled individuals who can access technologies to more easily integrate into society, but it is also, unfortunately, taking those individuals who cannot access technology and really isolating them more and more. And that is a real danger we need to be watching for.

But it does cut across. I think interagency cooperation in this area is extremely important. I also think it is a particularly strong place for seeing really effective interagency cooperation.

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Statement of RESNA,
Association for the Advancement of Rehabilitation Technology
on
Technology Related Issues in PL 99-506 and PL 99-457
to the
Senate Subcommittee on the Handicapped

October 8, 1987

1. Introduction
2. Association for the Advancement of Rehabilitation Technology
3. Need for Congressional Leadership and Review
4. Benefits of Technology
5. The Need for Coordination
    a. OSERS Technology Task Force
    b. Next Steps, Major Issues
6. Technology Service Delivery
7. The Need for Regulations
8. The Need for Hearings on Technology
9. Clarification of Terminology
10. Technology and Engineering Research
    a. Priority Setting
    b. Funding Level for Research
    c. Rehabilitation Engineering Center Program
11. Conclusion

INTRODUCTION

Mr. Chairman, my name is Gregg Vanderheiden. I am the Director of the Trace R&D Center at the University of Wisconsin-Madison, an interdisciplinary research, resource and clinical center which specializes in communication, control and computer access. I have a degree in Electrical and Computer Engineering, a Master's Degree in Biomedical Engineering and a Ph.D.in Technology in Communication Rehabilitation and Child Development. I have been active in the field of rehabilitation technology for the past 17 years, and have served as Principal Investigator on over 50 grants and contracts dealing with rehabilitation technology. I am a faculty member in the Department of Industrial Engineering, Human Factors Division, as well as a member of the Department of Rehabilitation Medicine at University Hospitals. I co-chair the Government-Industry Initiative on Computer Accessibility. I serve on the Scientific Review Board for Rehabilitation Research and Development of the Veteran's Administration, and served on the advisory panel for the 1982 OTA study on Technology and Handicapped People. I am a founding member of RESNA, the Association for the Advancement of Rehabilitation Technology, and the Secretary-Elect. I am testifying today on behalf of RESNA. I request that my written statement be included in the record of the Committee's hearing.

ASSOCIATION FOR THE ADVANCEMENT OF REHABILITATION TECHNOLOGY

RESNA is concerned with transferring science, engineering, and technology to the needs of persons with disabilities. Our Association and the nearly 1000 individuals it represents welcomes the opportunity to comment on issues related to rehabilitation technology in the implementation of PL 99-506 Rehabilitation Act Amendments of 1986, and PL 99-457 Education of the Handicapped Act Amendments of 1986. Our members are rehabilitation professionals from all pertinent disciplines, providers and consumers. Our goal is to promote and support the research, development, dissemination, integration, and utilization of knowledge in rehabilitation technology and to assure that these efforts result in the highest quality of service delivery and care for all disabled citizens.

THE NEED FOR CONGRESSIONAL LEADERSHIP AND REVIEW

I would like to commend this committee's efforts to include specific provisions for rehabilitation technology services in the Rehabilitation Act. You have established a foundation for getting appropriate technology into the hands of more disabled people. This has been an important first step. As we are all well aware, there is much still to be done. Developing mechanisms to ensure that disabled individuals can secure the technology and services they need is, and will continue to be, an issue that needs consistent Congressional leadership and review.

BENEFITS OF TECHNOLOGY

To work, one needs fundamental capabilities: independent mobility, communication, access to the worksite and job tasks. All of these can be addressed by technology. Technology does not remove the impairment or disability; instead, it can be used to leverage the ability of disabled people, particularly those with severe disabilities, and thereby reduce or remove the handicap. When we think of technology, computers often come to mind. Computers have changed our approach to our jobs and to school. However, there are also more mundane but equally important technologies, and they should not be overlooked. When we discuss technological support, we include the entire range of technology, both high and low tech, that can be applied to address that barriers confronted by individuals with functional limitations.

Technology spans across the customary ways we categorize disabled people and the services they need. It is needed by individuals of all ages, and influences most aspects of a person's life. It is geared to functional needs such as communication and mobility, which do not end at the close of the school day, or stop six months after one is gainfully employed. A non speaking child whose communication device is locked in the classroom all summer would probably like to tell you that they have things to say after school is over! Disabled people will have needs for technological support throughout their life, if they are to gain equal access to educational, employment, and recreational opportunities enjoyed by the majority. It is rather meaningless to create employment opportunities for a person who cannot obtain the technological support to achieve the independence necessary to effectively live and travel to his chosen worksite. Thus technology cannot be addressed in any one piece of legislation, nor can it be provided or supported in any single agency or program.

THE NEED FOR COORDINATION

Although we are here today to comment on two separate pieces of legislation, it would be a mistake to try to isolate technology issues into arbitrary and discrete categories. Rehabilitation technology may be one of the few specific rehabilitation services that reaches across all three of the components of OSERS. This fact was recognized with the establishment of the OSERS Task Force on Technology, which met for the first time on September 2,1987 to look at broad and interrelated technology issues.

PL 99-506 adds clarification and emphasis to the mandate of the state vocational rehabilitation agencies in the area of technology related services, and now specifically includes provision for training professionals in rehabilitation engineering. However, there was nothing precluding state agencies or RSA from these tasks prior to PL 99-506, and in fact some states have a history of service provision in this area. Likewise, technology is covered within PL 99-457, though not to the degree of specificity, particularly regarding services that may be necessary. We would hope that the increased clarification that PL 99-506 has provided OSERS in the area of technology support for disabled individuals will facilitate and encourage the agency's efforts to consistently incorporate this important emphasis on technology in implementation of all OSERS programs including new initiatives such as early intervention and supported employment, established programs such as Independent Living Centers, the Rehabilitation Engineering Centers program, and all OSERS supported information dissemination activities. Although there may already be implicit provision for technology related support throughout OSERS activities, it will also be useful to include explicit language specifying that technological support be incorporated into each of the relevant programs. Without this targeted attention to utilizing rehabilitation technology, many disabled individuals, particularly the most severely disabled, will be denied access to full participation in employment, education and community life.

Next Steps, Major Issues

The next steps that are needed include: increasing awareness of the benefits and availability of technology; guidance in incorporating technology into existing programs; and training and interpretation for all participants involved about the role technological support can play. S.1586 The Technology to Educate Children with Handicaps Act, introduced on August 3, 1987 would be a good beginning for addressing some of these points. There are also major issues related to training rehabilitation technology service delivery practitioners, and for developing quality assurance procedures that must be addressed immediately. This needs to be done in conjunction with pre and post service training for parallel fields in the rehabilitation process, as well as for clients, their families, and employers.

Solid data is needed on some of the basic issues surrounding resource allocation. There have been fears and reservations expressed often related to the notion that technology is "too expensive". Although we have information on the costs, effectiveness, and benefits of both high and low technology, it is primarily anecdotal. Further documentation is needed to substantiate the personal and economic impact that technology has on the life of a disabled individual.

TECHNOLOGY SERVICE DELIVERY

The most significant change that PL 99-506 made in this area was the recognition that services are critical to applying technology appropriately. The following variables were identified in discussions at a major service delivery symposium as being essential components of any comprehensive rehabilitation technology service delivery program:

. Knowledgeably trained, available rehabilitation technology service providers

- Consumers who understand the benefits technology offers, and know where to find services
- Professionals who understand the benefits technology offers their clients and who can make appropriate referrals
- Product availability
- Availability of technological services
- Financial resources availability to pay for products and services
- Information that links these other components together

These issues reach across all of OSERS from research and development and technology transfer that encourages product availability, through information, to delivery systems for children and adults.

At the November '86 Rehabilitation Services Administration Regional Forum in Atlanta, the director of the Rehabilitation Engineering Program at the University of Tennessee stated: "The provision of rehabilitation engineering/technology services is not simply providing a technical device. It is a systematic approach to service provision which can include: assessment, evaluation, information sharing, modification of commercial equipment, designing and fabrication of customized equipment, usage training, maintenance and repairs; all functioning as an integral part of a comprehensive rehabilitation service delivery system. It is not necessary that professionals be rehabilitation engineers in order to become skilled at provision of appropriate technological services. Many appropriate services can be provided for disabled individuals that do not require extensive involvement of engineering design and fabrication. In many cases the engineering contribution has already been made in the research and development of the commercial product. However, rehabilitation engineering services are ideally provided in a multidisciplinary professional environment that can support the needs and desires of the disabled consumer."

It is fortunate that the new Rehabilitation Act Amendments do not limit the state VR agencies to any particular approach in their inclusion of rehabilitation engineering/technology services. It provides these agencies with the opportunity to plan for an approach to rehabilitation technology service delivery that is consistent with emerging trends in rehabilitation practice as well as with changing consumer expectations and the new environments in which rehabilitation services are provided.

Based on the extensive range of activities that can be included in the scope of rehabilitation technology services, it is puzzling to see some state VR agencies still trying to develop in-house engineering capacity when they are not likely to develop, for example, an in-house prosthetics staff, or an agency-employed van modifier. A few state VR agencies have developed in-house engineering and fabrication capability. Doubtless, many of these efforts were fueled by the frustrations of limited, or seemingly nonexistent, sources from which to purchase the services which the agency saw it needed. However, technology services are becoming increasingly available. It may no longer be necessary or even desirable for a state VR agency to try to fill this gap in technology services by developing an internal service delivery capacity. It may actually be counterproductive in the long run for government agencies to continue to develop in-house services which would impede the development of private sector initiatives. If an agency such as VR remains the primary source for technology services, disabled individuals who have lifelong technology needs will have no place to go for their services when they are no longer agency clients. If agencies cannot currently find the required services in the community, it may be necessary for them to actively foster the development of community based rehabilitation technology service delivery capacity as they plan for the long term needs of disabled citizens. This type of priority becomes even more feasible as several different agencies within the state recognize the need for encouraging such private sector enterprise. (Agencies with responsibility for rehabilitation, developmental disabilities, special education, aging, etc. are some of the more obvious ones to get involved. The governors of two states, Minnesota and New York, have established ongoing Task Forces on Technology and Disability to look at these issues in a coordinated manner. Other states should be encouraged to do likewise.)

THE NEED FOR REGULATIONS

One of the reasons that state agencies may be unsure of the direction they should be taking in implementing the rehabilitation technology service delivery provisions of PL 99-506 is there are as yet no regulations available to interpret the law. RESNA recommends that such regulations be developed as soon as possible.

THE NEED FOR HEARINGS ON TECHNOLOGY

When a disabled person needs technological support, it is usually a life long need. You may only need to learn to drive once, but if you need one adapted vehicle, you will probably continue to need adapted vehicles. If you require a motorized wheelchair, it is not likely you will outgrow that need. There are significant differences in planning for long term vs short term needs. The rehabilitation system has traditionally focused its attention on shorter term and/or time-limited types of interventions. However there is now an increased recognition of the importance of ongoing, coordinated support systems such as independent living and supported employment. Technological support services and systems play an important role in these new trends that are redefining the entire habilitation/rehabilitation system. There has only been a single generation of severely disabled persons who have benefitted from significant technological intervention. We are only now beginning to get a sense of the longer term issues that a comprehensive support system must address. Disabled individuals and vocational rehabilitation agencies are already facing questions such as: Where does the next adapted vehicle come from? How does one upgrade computer adaptations to remain competitive in the workforce as more sophisticated technology becomes available? What is a rehabilitation agency's role when former clients find they need post employment services such as financing for subsequent generations of equipment in order to stay employed?

There are also unanswered questions about the potential of technological support in early intervention. A developing body of knowledge in such areas as the positive developmental impact of powered wheelchair use for children as young as 18 months surely points to the advantages technology can bring to the area of early intervention.

Issues such as these are beyond the scope of today's hearing. RESNA would, however, encourage you to continue your investigation of these matters by holding further hearings which could be targeted specifically to technology related concerns of disabled people of all ages. We recommend that the scope be expanded to include all relevant federal programs, not just those in OSERS. Coordinated planning, activities, and programs must be developed in order to provide the necessary technological support so that no group of disabled persons is denied the benefits technology can offer. Even though the technology is available, if a disabled person is too young or too old, lives in a rural area, or isn't in the regular rehabilitation channels, he or she does not have much chance of getting needed technological support.

CLARIFICATION OF TERMINOLOGY

What we are now generically calling "rehabilitation technology services" have been provided under various other names for many years. The practice may not be new, but the necessity for a conceptual change is. "What has changed significantly in the past several years is the nature of the technology available for helping persons with disabilities... and the environment in which rehabilitation services are provided." (Rehabilitation Technology, Thirteenth Institute on Rehabilitation Issues, 1987.)

Engineering has been and continues to be one of the essential components of rehabilitation technology, both in R&D and in service delivery. You will however notice a shift in terminology, from rehabilitation engineering services to rehabilitation technology services. Following RESNA's lead in renaming itself the "Association for the Advancement of Rehabilitation Technology", this shift in language reflects the actual state of the art as practiced "out in the trenches." It is technology that is being delivered by a wide range of professionals, and this technology is developed and supported by engineering.

Using the terms "technology" and "services" simply reemphasizes the broader context within which the engineering contribution is made, and hopefully refocuses attention from the device to the continuity of services needed to appropriately apply technology. It also should provide the basis for increased collaborative effort and cooperation in integrating technological support services into the classroom, worksites, and residences of individuals with disabilities. RESNA agrees with the suggestion of the Coalition on Technology and Disability, that the phrase "rehabilitation engineering" where it relates to services in PL 99-506, be amended to "rehabilitation technology".

TECHNOLOGY AND ENGINEERING RESEARCH

The National Institute of Disability and Rehabilitation Research REC program is the core of our country's research in the field of technology for individuals with disabilities. There are several issues related to NIDRR's research program that deserve further attention:

(1) Priority setting.

More evidence of input by consumers and rehabilitation technology professionals into the R&D priorities of the agency is sought. Even though NIDRR sought input through several channels, including a symposium held for that specific reason, the proposed final priorities as published in the federal register (see issue 3 below) do not seem to adequately reflect this input.

(2) Funding level for rehabilitation engineering research.

A colloquy from the September 20, 1978 Congressional Record is attached. It clearly states the intent of the Senate to increase the level of rehabilitation engineering research funding above the previous allocation ceiling of 25% of the Institute's budget. The current level of funding for this area is somewhere between 16 and 19% . In June, 1987, the RESNA Board of Directors passed a motion encouraging the United States Congress to direct the Secretary of Education, the Assistant Secretary for Special Education and Rehabilitation Services, and the Director of the National Institute on Disability and Rehabilitation Research, to restore the level of funding for rehabilitation engineering research to a minimum of 25% of the Institute's annual appropriation. As appropriation decisions are being made, RESNA asks that this subcommittee help ensure that adequate funding levels are available for rehabilitation engineering/technology related research programs.

(3) Competition for Rehabilitation Engineering Center Program grants.

On August 24, 1987 the Department of Education announced an "Invitation to Apply for New Awards Under the National Institute on Disability and Rehabilitation Research Program of Rehabilitation Engineering Centers" in the Federal Register (page 31804). Applications are due October 30, 1987.

The proposed funding priorities for the Rehabilitation Engineering Center (REC) program were announced in the Federal Register on August 21, (pages 31730-31735). Twelve proposed priorities were listed. The Federal Register stated that "Interested persons are invited to submit comments or suggestions on or before September 21, 1987." According to the August 24 Federal Register RFP announcement, "If there are significant changes in the final priorities, applicants will be given an opportunity to amend or resubmit their applications."

The timeframes allowed in this process do not allow an adequate interval for ensuring that the applications for these grants are of the highest possible quality, that they are addressing real priorities, and that the competition for these RECs is fair to all potential applicants. Because of the pressure to avoid a disastrous gap in funding for existing programs (most of which cannot continue to exist without federal support), NIDRR seems to be rushing both the comments period and the applications process for this new cycle of RECs.

We know you recognize the importance of this issue. The federally funded REC program is the core of our country's research in the field of technology for individuals with disabilities. Priority setting, and ensuring high quality and fair competition, are too important to be rushed because of logistical problems.

RESNA has already written to you about issues related to the current competition for new Rehabilitation Engineering Center grants. We would like to reaffirm our support for finding a way to avoid a gap in the funding for existing grant recipients, should they be awarded a new REC grant or cooperative agreement. It would be a real blow to rehabilitation engineering research in this country, if any center were to lose staff and have to rebuild, even though it had won in the competition for a new 5 year grant. We hope that some more equitable system can be developed, so this situation does not occur again.

CONCLUSION

It is indeed exciting and encouraging to see the possibilities that technology holds for individuals with disabilities, and to be a part of the incorporation of technology services into comprehensive rehabilitation efforts. RESNA applauds your efforts to ensure that disabled citizens of all ages have access to the benefits of technology, and we look forward to working with you to achieve that goal. Planning, cooperative efforts between public and private sectors, and ongoing collaboration among all players concerned will be the keys to developing and implementing standards of excellence which will ensure that disabled people will be able to obtain the technology support systems that enable full participation in American life.

Mr. Chairman, I appreciate the opportunity to present these comments and I welcome any questions or requests to clarify my remarks.

Senator **Harkin**. Next, Mr. Griffin, External Vice President of the National Council on Independent Living.

Mr. **Griffin**. Mr. Chairman, it is a pleasure and a privilege to have this opportunity to speak with you this morning on behalf of the National Council on Independent Living and the right of all Americans to self-determination and productive independence.

Our objective in addressing the subcommittee today is twofold. First of all, we would like very much to convey the strong sense of our membership that positive steps have been taken by the Congress and the administration during the recent past which support the aspirations and interests common to all people with disabilities. In this regard, I refer both to the enactment of the Rehabilitation Act Amendments of 1986 and to the appointment of Justin W. Dart, Jr. as Commissioner of the Rehabilitation Services Administration.

Second, we would like to direct your attention to an apparent dichotomy between, on the one hand, the just and empowering nature of these actions and their stated intent and, on the other hand, the manner in which key aspects of the value of these actions have subsequently been interpreted and treated.

In your deliberations, we not only urge consideration of the particulars of our testimony, which are raised in the context of these actions, but of the overriding issue of our right to substantive participation and control over those processes which determine our destiny and quality of life. This, we are convinced, is the central issue and that which is failing to survive the process of translating commendable actions and intentions of Congress and the administration into reality for people with disabilities.

The Rehabilitation Act Amendments contained landmark language growing out of the independent living movement. For the first time ever in the history and evolution of Federal efforts to provide rehabilitation services and support for the independent living goals of Americans with disabilities, there was a tangible commitment to place control over at least one aspect of such efforts in the hands of those people whose interests are primarily at stake.

By this, I of course refer to the governance of Title VII, Part B Centers for Independent Living. For people with disabilities, this commitment to consumer control by both the Senate and the House represents a step away from dependency producing paternalistic policy and a step toward a nationwide system of services which are genuinely accountable to our interests.

I am sure you are aware, as evidenced by the Subcommittee's letter to Commissioner Dart of June 2, 1987, the process of implementing this policy change and therefore, consumer control of Centers, has been threatened on the basis of interpretation by the Department of Education.

While it is beyond the scope of this testimony to fully articulate the background and detail which has contributed to the manufactured cloud and confusion which currently hangs over and surrounds prospects for implementation of consumer control of centers, we come to you again seeking recognition of this most basic of issues.

In addition to the matter of consumer control and self-determination just stated, we also seek to bring to your attention the concerns being expressed throughout the country in connection with implementation of provisions of the act regarding the Part A Program and formation of State Independent Living Councils.

With respect to the Part A Program, we wish to share with you our perception that the intent underlying funding of part A was to strengthen and expand the availability of independent living services in cooperation with centers for independent living. This interpretation on our part is underscored by, for example, the report of the House Committee on Education and Labor, dated February 6, 1984, in which it is stated regarding the authorization of appropriations for independent living services, "The Conferees wish to strongly endorse the full implementation of the independent living concept through funding for part A of title VII, which authorizes a Statewide comprehensive service delivery system cooperatively with centers funded through part B of this Title. Services made available through part A would enhance, expand, and stabilize the Independent Living Program. Although only five years old, Independent Living Centers had demonstrated that there are cost-effective alternatives to institutional care."

With respect to the Part A Program, let me share with you that while positive examples may in fact be cited with regard to implementation efforts in some States, there is a prevailing concern that, rather than functioning largely to strengthen and expand, implementation efforts have been characterized by the development of bureaucratic mazes which confound rather than complement the efforts of centers, as well as an overall lack of direction which is consistent with the intent as stated.

Moreover, we are concerned that despite very recent efforts to gather data, which could be used to evaluate the effectiveness nationwide of the Part A Program, the program remains adrift and in need of policy direction and systematic evaluation.

Senator **Harkin**. Mr. Griffin, all the other panel members have been very good at keeping it to 10 minutes. I have been watching the clock. I have your testimony here, and if you continue to go through it, it is going to take us at least perhaps another 8 or 9 minutes. Could you in 4 minutes summarize some points that I see that are in your testimony about what you are recommending and urging?

Mr. **Griffin**. It is my intention, Senator, to drop portions of the testimony as I proceed. But thank you for reminding me of what I intended to do in any event.

Senator **Harkin**. Thank you, because I really have to leave at noon, and I want to get to the questions.

Mr. **Griffin**. I understand.

Again, I want to underscore the need for direction and systematic evaluation of part A.

Very briefly, as regards the matter of State Independent Living Council provisions, we would briefly like to state that while the concept is worthy of our support, experience dictates caution and recommendations of a practical nature. Toward this end, we would urge that the process of implementation and composition of councils be based on input from consumers of independent living services as the basis for appointments made by directors of State agencies to the council. Second, it strongly recommends that a majority of the council be composed of consumers in addition to the required and meaningful involvement of parents and guardians.

Finally, Senator, let me say that it is a pleasure to share with you the wide and deeply-felt support by people with disabilities for Commissioner Justin Dart. While it is our understanding that differences have occurred and been expressed with respect to the proper role and authority of the Commissioner, it is not our intention to emphasize differences.

Rather, we wish to emphasize that the appointment of Commissioner Dart represents for people with disabilities the possibility that qualified people with disabilities are not discriminated against by this Government and that the administration and Congress indeed act on the basis of professed beliefs in the rights and productive potential of all Americans.

If the possibility and promise represented by the appointment of Commissioner Dart is to be translated into policy and practice based on the right of people with disabilities to control their own lives and play a substantive and equal role in the decisionmaking processes of the Government it is necessary that, along with responsibility, there is given the authority to form and carry out the responsibility of the Commissioner and the Rehabilitation Services Administration, to serve people with disabilities.

As an organization of people with disabilities representing every State and region of the country, we feel singularly qualified to say to you that the perspectives and direction of the Commissioner do in fact serve to further the interests of people with disabilities and to bring us closer to our dream of a just and barrier-free society in which all Americans may lead productive lives.

Thank you.

Senator HARKIN. Thank you very much, Mr. Griffin.

Mr. Dziedzic, on page 9 of your statement you observe that:

> Because of current administrative practices within the Department, we are seeing disability group pitted against disability group, advocacy group against advocacy group, a general lack of trust and cohesiveness that must be present in order to enable the programs for persons with all disabling conditions to succeed in the States.

I recognize that, too, and I recognize it in other areas outside of the disability community. But my focus right here is on the disability community.

I am just going to ask you, what efforts have you and your organization made to help try to get the disability and advocacy groups to unify and, try to address the problems with the implementation or lack thereof by the Department of these 1986 Amendments?

Do you see what I am asking?

Mr. DZIEDZIC. Yes.

Senator HARKIN. I want to know—we have a lot of groups out there, and there are a lot of groups, I am sure, represented here in this room. I understand the reasons for the frustration; I understand the reasons why different groups are being pitted against one another. I do not believe we have to succumb to the pressure that are coming down that cause that kind of pitting of one against the other.

And to just restate my question, what efforts have you and your organization made to try to unify and bring together groups to address your mutual concerns?

Mr. DZIEDZIC. I will try to do justice to your question. As one State administrator, the most important thing I do is not administer the programs, but create an environment where we can serve people effectively. And part of that environment is working with deaf/blind people and different blind groups, in my case, so that we move forward together. If there are concerns, we address them, and we do not take from one to give to another. It is the most important thing I do as a State administrator. Without that, we have an environment of hostility and attack that tears the program down in my State.

That is what we are asking of our Federal partner. That is what we see in the Commissioner of Rehabilitation of Services. We find a person who should have the authority to do that, who has the commitment and ability to do just that. And we are deeply frustrated that he has not been allowed to do it; he has been thwarted.

What we have done, then, is say allow him to perform the functions of his office, because in that we believe there will be a restoration of the harmony. We stand ready in any way possible to assist in that.

Senator HARKIN. Well, then, let me ask you the kind of question I propounded to the Assistant Secretary and the Commissioner. I would like to have your opinion about any possible restructuring of OSERS and RSA. For example, should the Commissioner still be a Presidential appointee, and should RSA still be kept in the Department of Education, or should it be moved someplace else?

Mr. DZIEDZIC. I was reminded that a year ago when some similar issues were brought to this body about the National Council on the Handicapped, you resolved it in a certain fashion. I do not know if that is a solution.

I know in my own State, and I know from watching different Federal programs, that where the boxes fit on the chart have a lot less to do with how cooperation happens than the good will, commitment, and building to seek commonalities than on anything on the organizational chart.

So I would have to believe that those sorts of solutions need not be the answer. CSAVR was in the forefront of having Congress establish Rehabilitation Services within the Department of Education, housed in OSERS. We believed it was a good idea then. We sincerely like to think it is still a good idea.

The solutions are not necessarily legislative; they are solutions of making something work respecting the integrity of the Rehabilitation Act.

Senator HARKIN. Can I take from that, then, Mr. Dziedzic, that you are willing to be involved—not only willing, but that you will offer to be involved—in sitting down with OSERS and RSA to try to be helpful in working out these differences to be supportive of getting that working relationship back on track again?

Mr. DZIEDZIC. We have been asking, and we have been pleading for that, and we are waiting for that signal that these concerns have been heard and that there will be movement.

Senator **Harkin**. Well, then, I am going to ask you then Senator Weicker's question—which he cannot get back; he is on the Floor right now—but why did CSAVR choose not to participate in the rehabilitation engineering task force?

Mr. **Dziedzic**. After several years of trying in every way we could to be actively involved with the Federal partner and finding distance, we finally, in frustration, said enough is enough; we need to deal specifically with the person we know can be accountable.

We were distressed to learn that the task force and efforts he had planned to proceed with were put on hold for an extended period of time, well into when the program needed to be implemented, and that after some delay, then, it reemerged as a task force of OSERS. Apparently—well, I will not pursue with apparently. It is dealing with implementation of the Rehabilitation Act.

If it is the intent of Congress to have OSERS implement directly all the programs of the Rehabilitation Act, then Congress should indicate so. And I hate to be in the position of appearing to say we do not want to proceed with the program. We are proceeding with that program and trying diligently. We need a Federal partner that we can work with honestly, consistently, and know that the next meeting and the next efforts will produce results. And right now, we have found ourselves in the last several years in a position of not knowing what to expect tomorrow. We are asking for that to be clarified. This, and dozens and dozens of other legitimate program needs do need to be tended to.

Senator **Harkin**. I do want to pursue this a bit further because this is an important point. This task force was on technology. This cuts across both the special education programs and RSA, the rehab programs. Therefore, it is not just in rehab, but it is OSERS-wide; it covers everything, a broad front. To that extent, I think it would be appropriate, if it is a broadly-based thing—I ask you this—would it not be appropriate that it be under OSERS, since it does cover both, and that you should be involved in a more broadly-based approach to this problem?

Mr. **Dziedzic**. I can agree with everything you said—but not at the expense of attention by the professionals in RSA to work with us specifically and cooperatively, implementing the provisions of the Rehabilitation Act.

Why did that have to wait months, when they were prepared to move, and then when the meeting occurred, it dealt specifically with issues of the Rehabilitation Act? What we are asking for is attention to move forward, and we are finding from our Federal partner actions that leave us in the lurch, leave us on the limb, and we are saying correct that.

Senator, we want to do this program of rehabilitation engineering, but we also want to have a relationship with the Federal partner that we can depend upon for the program.

I hope that is responsive to your question.

Senator **Harkin**. Well, it just begs another question from me. And again, I am just trying to draw this out. Why wouldn't this be—I am trying to rephrase your answer there—but it seems to me you were saying that you wanted this centered in an entity that addressed your problems and your concerns, and I am saying that we were talking about one specific area that cuts across both. Were you saying that you were not willing to engage in that because of your other concerns outside of that?

Mr. DZIEDZIC. I think the more fundamental concerns that we have apply to this situation. And after watching a series of OSERS task forces dealing with the reorganization of RSA, dealing with the policy system of RSA, dealing with monitoring in RSA, in effect usurping every policy consideration, personnel decision, budget and technical assistance, we felt that we faced, this program faced, and this Congress faced the possibility that RSA was in the position of being rendered not only unstaffed but dysfunctional by design of policy responsibility.

So we say——

Senator HARKIN. But I ask you again: Does RSA answer to the Assistant Secretary?

Mr. DZIEDZIC. It exists within the Department of Education, and we believe the Rehabilitation Act assigns primary responsibilities for implementation. Just as in many States, primary responsibility with a sole State unit is clear, although many programs exist within other State agencies. But you know who to turn to when you have a problem in a State.

Senator HARKIN. Well, as I said, I understand your frustrations, and I understand this problem. I am trying to indicate that these kinds of stalemates are at the expense of handicapped people all over.

Mr. DZIEDZIC. I agree with you, I agree with you.

Senator HARKIN. And somehow, we have got to move ahead.

Mr. DZIEDZIC. Senator.

Senator HARKIN. Yes?

Mr. DZIEDZIC. We invited—actually, the Assistant Secretary had asked time on the fall meeting of the Council of State Administrators of Vocational Rehabilitation. We responded to her, providing her time, indicating that we felt the issues that needed to be discussed were these issues of working relationships. She refused that request, indicating that they had been responded to by the Secretary and were unsubstantiated, and she saw no reason to meet with us.

We want the recognition that these concerns are legitimate and need to be addressed, and we are ready to do that.

Senator HARKIN. OK. I appreciate that. And I say to you, as I say to representatives of the Department who may still be here, that I, and I am sure my staff, and I am sure that Senator Weicker and anyone else on this Committee, we do not want to get into this "chicken and egg" argument of who started it. I do not want to talk about that.

Let us look ahead, and let us see how we can start getting this thing back together again and working cooperatively, and let us forget about chickens and eggs and which came first and all that because we get into that game and we may go back to the turn of the century sometime.

I have to leave; obviously, there is a vote on the Floor. But again, I want you and all the other groups who are here to know that we have got a tough job. We are confronted, as Senator Weicker said, with the administration, and with—I will be quite frank—a Secretary of Education who may give lip-service to these things, but has not put his money where his mouth is, and the Department has not put the personnel in there to fulfill what they say they want to have done.

So we have got to work together. I do not know how much longer we will be confronted with this, but however long we are, we have got to make sure that these programs work and work effectively for all disabled persons.

I know that is how you feel; I know that is how everyone here feels. So let us somehow start getting this thing together and we will just move on down the road, and however we can be helpful, we will. I say that to all of you.

Now, I apologize for having to leave at this point. I am going to turn over the rest of the subcommittee hearing to Mr. Silverstein, which is allowed under the Senate rules. I will not be able to return. I will leave it to Mr. Silverstein's discretion whether he wants to take the third panel at this time or whether he wants to bring them back at a future time. If you have the time and if the third panel has the time, I would suggest that you finish the hearing yet today; but if that is not possible, then perhaps we could reconvene at another time.

Thank you all again for coming. We appreciate it.

Mr. Silverstein has some of my questions for the record that I wanted to ask, so if you could wait, I would appreciate it.

Mr. SILVERSTEIN. Mr. Williams, you just used an extremely advanced piece of rehabilitation engineering to present your testimony. Yet, in your work and daily life, you still rely heavily on a manual communication board to convey your thoughts to those around you. Why is this?

Mr. WILLIAMS [through Mr. Records]. I think one reason is, of course, cost. This costs about $5,000. Beyond that, I think it has to do with the fact that I was 15 years old before I even got this board.

To me, that has profound policy implications. We need to get assistive devices like this into the hands of kids as soon as possible which, if I had, I can say is why Senator Kerry's bill is so important.

Mr. SILVERSTEIN. Do you have any thoughts on the issue of individuals who are going through the special education system and the transition from that system to the rehab system?

Mr. WILLIAMS [through Mr. Records.] When I was growing up, the term "transition" had not come around yet. I did it on my own, but like I said, in my case, if I had just been a bit more severely disabled, I might not have been able to do that.

I still see kids in high school who are slipping through the cracks. We still put too much emphasis on the question, can this person work, when we should be asking what can we do to support him on the job.

Mr. SILVERSTEIN. Thanks, Mr. Williams.

Mr. Vanderheiden, in your testimony, you suggested that the next major steps include increasing the awareness of the benefits and availability of technology and guidance in incorporating technology into existing service delivery programs.

Do you have any preliminary ideas or suggestions on ways to do that; what role Congress might play in assisting that?

Dr. **Vanderheiden**. There were two areas you mentioned, one of them had to do with information and the other one had to do with expertise, I believe. First, is getting information to consumers. This area is very weak. Consumers will not go to clinicians to get aids that they need if they do not know such aids exist. Similarily parents need to be aware of what is possible as do family physicians. Often parents are told by a doctor that there is nothing more that can be done for a child even though there may be a special rehab technology program in the same city—or even the same building.

There is a real information problem. Part of it is awareness, and part of it is having the information assembled and in identifiable locations so that when people do have a question, they have a place to go.

So one area that the government should address is providing a consistent and substantial commitment toward information.

Information has always been sort of a lost child. This is due to several factors. First, it is not research in nature and therefore looks more like a local than federal concern. Yet it must be coordinated on a national level to be effective or cost effective. Secondly most people think that information costs little to generate and little to dispense. Third, nobody is willing to pay anything for information. Parents do not expect to call up and be charged $10 at the end of a phone call, asking a question.

So solid, consistent (not on again off again) substantial funding as a federal level is needed in this area. This is a tough area and one that does not go away. But it is a critical area as well.

The other area of need that I think you touched on was service delivery expertise. This training has got to come from a number of places. We can try to build it into our programs on the college level, but unfortunately it is hard for professors to teach topics that were not taught when they went through school or for which they have no clinical experience. As a result—progress in this area is slower but progress is being made.

We also need to be looking at ways of getting good clinical expertise into the training process. Some things that could be done would include setting up good clinical settings, getting some quality control systems in place, and setting some model centers up which can then be used as practicum bases for generating more.

Mr. **Silverstein**. What is your understanding of the way things are working in New York and Minnesota with the task forces that have been specifically set up? Is there a lot that we might learn from their experiences?

Dr. **Vanderheiden**. Both of them have generated a lot of very good information and are models for pro-active participation and work in this area. So yes, definitely, I think you should be looking at them.

Mr. **Silverstein**. Are specific Federal agencies addressing the issue of rehab technology better or worse than others? Is this another example where we are going to need to look at interagency coordination not only at the local but the State and Federal level as well?

Dr. **Vanderheiden**. Very much so. I think rehabilitation technology in particular is a topic which cuts across areas, disabilities, and settings. Many people even say it should be called "rehab-education technology" or some other new word that we invent and put into our dictionary, to reflect its cross area application. It cuts across children & adults, it cuts across work, educational, home, and community environments. As our society becomes more technical, it is not only allowing some disabled individuals who can access technologies to more easily integrate into society, but it is also, unfortunately, taking those individuals who cannot access technology and really isolating them more and more. And that is a real danger we need to be watching for.

But it does cut across. I think interagency cooperation in this area is extremely important, I also think it is a particularly strong place for seeing really effective interagency cooperation.

Mr. **Silverstein**. Thank you.

Mr. Griffin, a couple of questions. What is your reaction to or your feelings about the administration's dealings with persons with disabilities and the notion that your group stands for individual empowerment?

Mr. **Griffin**. Well, I am going to have to refer back to the testimony. I think, on the one hand, there have certainly been symbols, encouraging symbols, symbols in the form of, as I mentioned before, the appointment of Commissioner Dart; symbols in the form of endorsements, for example, of the report "Toward Independence" of the National Council on the Handicapped. I think that symbols are important; I think that substance is more important.

Mr. **Silverstein**. Before Senator Harkin left, one of the things he had said to me, and I will share it with you, is that he will repeat the commitment of those who signed the letter to ensure one way or another that within 13 days or soon thereafter, that the intent of Congress with respect to governing boards is put into place.

Mr. **Griffin**. I deeply appreciate that.

Mr. **Silverstein**. Thank you very much.

Before we call the next panel, could the three panelists come up so we can talk?

We will proceed now with the third panel. The third panel will consist of John Clark, from the National Association of State Directors of Special Education; Carol Berman, the Associate Director, National Center for Clinical Infant Programs; and Reed Martin, Advocacy, Incorporated, from Houston, TX.

John, please proceed.

STATEMENTS OF JOHN CLARK, PRESIDENT, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, WASHINGTON, DC, ACCOMPANIED BY FRANK NEW, PRESIDENT-ELECT, NASDSE; CAROL BERMAN, ASSOCIATE DIRECTOR, NATIONAL CENTER FOR CLINICAL INFANT PROGRAMS, WASHINGTON, DC, ACCOMPANIED BY VIKI DRAPER, MEMBER, INTERAGENCY COORDINATING COMMITTEE, STATE OF WASHINGTON; MARY ELDER, ADMINISTRATOR, EARLY CHILDHOOD INTERVENTION PROGRAM, TEXAS; AND REED MARTIN, ESQ., ADVOCACY, INC., AUSTIN, TX

Mr. **Clark**. Good afternoon, Mr. Silverstein, and members of the congressional staff.

The testimony from the National Association of State Directors of Special Education is in written form and is in your hands.

By way of introduction, I am with the Nebraska Department of Education; I am currently President of the NASDSE organization. At my left, joining me to assist, is Frank New, who is Special Education Administrator for the State of Ohio, and President-elect of the NASDSE organization.

Our written testimony has three components. The first of those is a heartfelt and firm thank you to the members of Congress and the Congressional staff for the bold move that is represented by 99-457. That thank you is tempered with details saying that it is important to keep the funding in place and most importantly to provide the oversight as evidenced in today's hearing to assure stability of the public policy.

The second part of our written testimony details specific problems that have been accounted in the last year. The year has been characterized by intense time pressure to meet the time lines set forth in the law.

In addition to those problems, we have documented through chronology each step of implementation so that the time lines can be apparent.

Finally, we conclude with a list of recommendations which should move past the present problems that have been brought to attention on many occasions and help recoup the momentum that is there for implementation of the most recent set of amendments.

In deference to our colleagues also at the table, I think we will just read very quickly those particular recommendations and then move at the pleasure of the Committee staff.

Earlier today, we heard great concern over staffing. This was also a concern in terms of the State's interaction with the Office of Special Education Programs. The unfilled 12 positions that are to be available have made themselves apparent in approval of State plans, in monitoring, as well as in the preparation of rules and regulations. We only ask, and the mechanism has to be left to the administrative agencies and to the arms of Congress, that that be cured immediately.

Because things have moved slowly, and the dollars have arrived, but on a very late schedule, we are requesting that the count of children aged 3 to 5 for this year only be delayed until April 1 so that those States that are in a situation of not being able to move until they have dollars at the door may be given full recognition, financially, of the commitment that they have made.

In the area of personnel training under Part D, Section 632, the disagreements, the problems, the misunderstandings of the last year can be remedied by first of all a specific, identified, earmarked appropriation exclusively for the use of States to deal with shortfalls and high priorities in the area of personnel training.

The second is a clarification of intent, particularly over what the relationship between higher education and State education agencies should be in respect to this matter.

And third, as has been mentioned in previous testimony training is all. Because these public policy efforts do not move until the properly-trained people are in place, we call for a congressionally-requested study by the Comptroller General to oversee and to explain and to make recommendations of the whole complex that is involved in providing qualified personnel, so that Congress may see direction in the future for smoothing out problems that are there.

The Regional Resource Centers are a treasure of assistance to the States and eventually to school districts and to parents and children. The role of those Regional Resource Centers was somewhat more specifically defined in the last set of amendments. Differences of opinion and interpretations continued to occur in the last year, and we request at this point that the Congressional staffs recommend to Congress itself that the intent of the Regional Resource Centers be made much clearer in terms of how State-defined needs are to be addressed.

In conclusion, we hope that we have turned the corner in many of the problems of the last year. So let me lay out three partnership initiatives on the part of our organization.

First, we have worked closely in recent weeks with Tom Bellamy and agreed to, first of all, see what could be done to improve the Part D personnel preparation program so that that concept, a very important one of the very close relationship between higher education capability and State needs, can be carried out. The second will be a multi-state, all-state, involvement in bringing greater clarity to the complex issues, arguments, concerning integration and least-restrictive environment.

Also, as individual States working through the NASDSE organization, we are all doing everything we can to support the GAO study on the impact of lawyers' fees.

In addition, we propose a three-way partnership between the NASDSE organization, the Office of Special Programs, and the Congressional staff, to take a very careful look at the information that is available to policymakers, to look at the data requirements that are in place, the capability of States to respond to those, and eventually to anticipate questions which policymakers will be asking so that we have good, accurate responses available.

In conclusion, let us state that all programs are better-served by the type of Congressional interest represented in this oversight activity. We look forward to continuing this type of dialogue. And on behalf of the organization, let me say that all the States are at your beck and call, and only a phone call or a special message away if we can assist in any manner.

Mr. SILVERSTEIN. Thank you.

[The prepared statement of Mr. Clark follows:]

STATEMENT OF

THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, INC.

TO

THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

WITH RESPECT TO

IMPLEMENTATION OF P.L. 99-457 AND P.L. 99-372

OCTOBER 8, 1987

MR. CHAIRMAN AND MEMBERS OF THIS SUBCOMMITTEE:

My name is John Clark. I am a member of the Nebraska Department of Education, Division of Special Education, and President of the National Association of State Directors of Special Education. With me today is Frank New, Director of Special Education for the State of Ohio, who is President-Elect of NASDSE, and Chairman of NASDSE's Legislative Committee.

Thank you for allowing us this opportunity to present the views of state directors of special education regarding the implementation of the Education of the Handicapped Amendments of 1986 (P.L. 99-457), and the Handicapped Children's Protection Act of 1986 (P.L. 99-372). By way of background, the views we put forth today represent the consensus views of all state directors.

Since January, 1986 our national office staff and several task forces of NASDSE worked closely with and provided extensive input to staff of the Senate Subcommittee on the Handicapped as it first conceived and then developed S.2294, which eventually became P.L. 99-457. And in the testimony before the House Subcommittee on Select Education in July of 1986 we strongly supported the bold new programs presented in that bill. It is in that same spirit of partnership and support for a strong Federal role in the education of children with handicaps -- at both the Congressional and the Administrative levels, that we offer our testimony today.

First, this is the first official opportunity we've had to thank the Congress for passing P.L. 99-457. This legislation, especially the new Part H program for serving children with handicaps from birth through age two, and the Section 619 (P.L. 94-142) program which extends the age range of eligibility for services provided by the nation's schools to include children with handicaps from age 3, is forward thinking, needed, and bold, especially considering the fiscal climate in which the legislation was developed and considering the philosophical opposition to these programs posed by the Administration.

The fact that all States have applied to participate in Year One of the Part H Infants and Toddlers Program and, that all states are participating in the new Section 619 program bears witness to the States' endorsement of these new Programs. As a result, thousands of children with handicaps aged birth through two, and over 30,000 more children with handicaps aged 3-5 will be served this year because of Congress's leadership in passing P.L. 99-457. For that we are thankful to you and proud of the response and the commitment of partnership in service by the States with the Congress.

On this note, we wish to remind you that the Congressional partnership role, both in funding these programs and in providing oversight on the implementation of these programs, is not only appreciated, but is essential to their success.

To be successful, the birth through 2 and the 3-5 initiatives will require both full funding by Congress and a cooperative administrative partnership between the federal government and the states. The birth-2 and 3-5 programs will require new and extensive expenditures by almost all states. Without adequate funding, Congress runs the risk of a "backlash" of attitudes for programs for children with handicaps, risks "drop-outs" of state legislatures and thus partial achievement of programs which we believe to be essential. We are encouraged by the funding levels set forth so far by the Congress in FY '87 and by the Senate in FY '88 for pre-school programs. Anything less could negatively impact the forward momentum of the States in embracing these programs.

It is appropriate to commend and to thank this subcommittee for two actions you have taken recently in these areas and to urge your continued support in seeing two amendments through to law. The first is the amendment which changes the status of Part H, Handicapped Infants and Toddlers Program, to the same forward funding cycle as the Part B State Grant Program. The second is your action to add $16 million to the original recommendation of $200 million for Section 619, Preschool Grant Program, to help assure the growth of the "new" children states will be serving next year.

Over the past decade, since the enactment of P.L. 94-142, NASDSE and the U.S. Department of Education have worked collaboratively to fulfill our respective roles in being leaders and administrators of programs which assure the provision of a free appropriate public education to the millions of children with handicaps in America today.

Today we will comment generally on that relationship and specifically on the performance of the Department during the past year in meeting its responsibilities for administering these programs. We will also request your support for what we believe is the need for several technical amendments or for clarifying language to several provisions of P.L. 99-457 which will eliminate for future years some major difficulties we've encountered during the past year. We will also comment on several partnership initiatives we are proposing to resolve some problematic areas associated with data requirements of P.L. 94-142.

Federal Administration of Programs

Congress has constructed, through the enactment of the Education of the Handicapped Act (P.L. 91-230) and its subsequent amendments, four basic responsibilities for the Office of Special Education Programs.

- the development of policy, primarily through the issuance of regulations;
- leadership and technical assistance through the use of discretionary funds and programs;

- the provision of financial support to States primarily through the review of State plans and annual grants under Part B (P.L. 94-142) of the EHA ($1.3 billion dollars in FY '87; and
- the monitoring of the administration and implementation of the EHA by SEAs.

The appointment in 1983 of Madeleine Will as Assistant Secretary of the Office of Special Education and Rehabilitative Services was greeted by the special education community as an exciting and promising event for the future of special education. Nearly every member of the special education community and particularly NASDSE recognizes her commitment to children with handicaps. In spite of this commitment, the record of performance of the four statutory responsibilities has not served to further the provision of educational services to our nation's children with handicaps nor has it served the spirit of partnership between OSERS and the State Education Agencies responsible for administering special education in the States. In fact, in each of the four areas NASDSE must express serious concerns about the OSERS/OSEP track record. We will address these areas in the fervent hope that cooperative relationships established in the past few months between OSEP and the State Directors represent truly a new spirit of partnership between the federal office and the States. We hope a corner has been turned and that we will work together in a new and positive climate. Nevertheless, the facts must be presented.

1. Policy Development and Regulations

It has been exactly one year since P.L.99-457 was enacted into law. Although the centerpiece of that law was the creation of new programs for infants, toddlers and children through age 5, OSEP has yet to issue regulations to guide the states in administering those programs. Provision of requested and needed technical and policy information has been extremely late and sparse. The flow of funds to the states was still not completed even as of last week. As a result, efficient start up of new programs and services in many states and local jurisdictions has been seriously jeopardized. The availability of new programs and services for thousands of youngsters with handicaps has been threatened.

It has not gone unnoticed by the States that these delays and inefficiencies of the Department in getting these programs going coincides with the Administration's statement of opposition to both the concept and the funding of these programs. We hope that there has been no overt attempt by the Department to thwart the will of Congress in implementing these programs, but the coincidence is alarming. We do recognize that these delays and inefficiencies may be due to the gross understaffing at OSEP during the past year. (There were at least 12 positions made available almost a year ago that are yet unfilled). To his credit, Tom Bellamy, Director of OSEP, has recently devoted considerable effort to issue needed information and to flow funds to the States for these programs. These efforts will minimize what otherwise would have been --

and still could be -- a "lost year" in meeting the 1991 goal for full implementation of the early childhood programs. (A descriptive chronology of OSEP's responsiveness is attached).

In light of these delays, and in the spirit of trying to prevent a "lost year" in implementation of P.L. 99-457, we urge this body to support a technical amendment we have submitted to Mr. Harkin, to his staff, and to your counterparts in the House which would postpone the "child count" date for 3-5 year olds as the basis for computing award of federal funds for one year only, from December 1, 1987 to April 1, 1988. This date change would allow sufficient time for State and local education agencies to evaluate and place "new children" the states estimated would be served this year.

2. **Leadership and technical assistance through discretionary funds and programs.**

We will comment here on two programs which were reauthorized in P.L. 99-457, programs of particular importance to State Education Agencies which each became objects of embattlement between the States and the Department this past year. We will be brief, because we hope that corners have been turned and, with your help, wrongs will be righted.

Section 632. Personnel Development Grants to States In P.L. 99-457, Congress made provision for all States to participate in the personnel development grant program in order to enhance implementation of their comprehensive system of personnel development. For the first time, each State was assured of receiving a Personnel Development Grant under Section 632 to assist in establishing and maintaining preservice and inservice programs to meet needs as identified in the States' comprehensive system of personnel development.

This was a truly significant action. We thank you for responding to our requests on this. It established an expectation that States would now have a stronger capability of working in a partnership/relationship with higher education to focus on States' specific identified personnel needs. This opportunity provided a renewed commitment and resources to the comprehensive system of personnel development requirement in the Education of the Handicapped Act.

Instead of building toward the fulfillment of this concept, this year's implementation of this program by the Department resulted in (1) a three month delay in startups from the traditional date of June 1 to October 1, and (2) a national "boycott" by the States, because of arbitrary actions in contravention to Congressional intent, and (3) "token" inservice opportunities in States.

We believe that the framers of the Education of the Handicapped Act envisioned a personnel development system driven by a needs assessment and implemented through a partnership between the State Education Agencies and the institutions of higher education.

We believe that Sec. 632 in P.L. 99-457 was designed to ensure the development of such a system. We do not believe that Congress intended this amendment to result in the development of "token" inservice training by the State Education Agency.

We, therefore, would recommend that Congress take three actions on this program: (1) clearly identify an appropriation for Section 632 that would enable the States to adequately carry out their roles in the implementation of a comprehensive system of personnel development, (2) clarify the intent of Section 632 in order to avoid in future years the problems encountered this past year (a full chronology of events describing these problems is attached); and (3) commission the Comptroller General to study the implementation, administration and effects of the entire Personnel Development Program and to develop any recommendations for legislative changes which would improve any of these aspects.

Regional Resource Centers. State Directors of Special Education have been very supportive of the Regional Resource Centers. They recognize the potential of these centers to assist the States in the development of quality education programs for children with handicaps.

The recent amendment to P.L. 99-457 promised even greater potential benefits. This amendment was designed to assure that the services provided by Regional Resource Centers will be consistent with the priorities identified by the States served by these Centers. While the amendment language addressed a concern previously expressed by State Directors, the implementation of this amendment during this past year has raised even more concern. Directors indicated their concerns when the Department imposed:

- the requirement to significantly expand the advisory committee from two persons per State to five persons per State.
- the requirement to conduct a needs assessment meeting in Washington, D.C. attended by the State Directors, Regional Resource Center staff, and staff persons from the U.S. Department of Education.
- the overemphasis by the Department in forcing the RRCs to staff up in order to respond to OSERS "priorities as opposed to SEA priorities."

These procedures added significant cost to the needs assessment process, and have drained resources and attention from activities that could have been used to assist the States to improve the services to children with handicaps. We believe these impositions diluted Congress' intent to have the Regional Resource Centers assist States in providing quality services to children with handicaps may not be met.

We urge your support in clarifying your intent in P.L. 99-457 of the role of the Regional Resource Centers in assisting States in meeting their identified needs.

3. **State plans and financial support**.

OSEP has, over the last four years, increasingly extended the review period for State Plans and increased the delay of awards offered to states under EHA-B.

In 1984 OSEP announced a three year staggered state plan schedule which was to allow for a more thorough and expeditious review of State Plans. Essentially, by only reviewing a third of the states every year, OSEP could devote its resources to that third and thus accomplish its work more efficiently, more rapidly and increase the amount of time States would have available to them Federal funds. However, as of September 15, this year, less than half of the states had been awarded funds, compared to 1983 when all of the Plans were approved and funds awarded by August 1.

4. **OSEP Monitoring of States.**

Despite previous testimony and assurances by the Administration, the OSEP monitoring system of the past few years has in fact performed less effectively and less efficiently than in previous years. In 1984 the Congress heard testimony that OSEP letters were late, that insufficient staff were assigned and that the monitoring system did not fulfill its commitment to visit SEAs on a three-year cycle. In that year 20 staff were assigned to the Program Review Branch, compared to 1981, when 42 professionals monitored SEAs. Today, there are only 12 staff which monitor SEAs, investigate complaints, and review state plans. Additionally, no supervisory personnel in OSEP -- from the Branch Chief responsible for monitoring to the Assistant Secretary -- have any experience in monitoring P.L. 94-142 or in the administration of EHA-B. In fact, the Branch Chief position has been vacant for 14 months, and the Division Director position has been vacant for 12 months.

Since 1984, instead of all states having been monitored as OSEP's plans projected, fewer than half have been monitored. And recently OSERS announced it has reduced to 10 the number of states to be monitored for 1987-88.

Reports to states are taking three to five times longer then 1984. Of the 21 States monitored in the last three years, only six have been closed out as of September 15. California was monitored two years ago this past September. Their initial report took a year to be delivered. They still have not received a final report. (A chart depicting the duration between on-site monitoring visits and issuance of draft and final reports is attached).

We present these facts as a basis for recommending that the Congress and/or the Department analyze its staffing situation and respond by assuring that appropriate numbers of qualified, competent, and well-trained personnel are present in each of the Divisions of OSEP, especially the Division of Assistance to States.

Partnership Initiatives

In this last part of our testimony we wish to present, for your information, a few participatory initiatives our Association is undertaking.

1. We have developed an agreement with Tom Bellamy to work together to (a) improve the administration, coordination and effectiveness of the Part D program, (b) to develop some initiatives in the area of Least Restrictive Environment; (c) and to improve the timeliness and accuracy of State reported data;

2. We are working closely with staff of the General Accounting Office as they conduct a Congressionally mandated study of the effects of P.L. 99-372 ("The Handicapped Children's Protection Act of 1986").

3. NASDSE proposes to establish a three way partnership between States, OSEP, and congressional staff to assure that data reported by States are reliable, valid, and of use to policy and decision makers at the Federal, State and local levels in their efforts to plan and evaluate appropriate educational programs for children with handicaps. This partnership will:

   - Assess the usefulness of the data currently required;
   - Describe the state of the art in terms of state progress toward full data accuracy;
   - Acquaint policy makers with the nature of the data bases which exist within certain states and districts;
   - Expand the information base available to federal policy makers by linking special studies to existing data bases;
   - Cooperatively design forms and data elements so that the present climate of shifting due dates and late arrival of official forms for data submission, (September 15, 1987 for the 87-88 school year) can be improved.
   - Resolve early the concerns of approval authorities such as OMB so that directives can be fully approved. Last year, an unapproved form was included in the official packet. This year, three of five tables in the packet have not yet received OMB approval. A number of states are prohibited from implementing unapproved changes.
   - Assure states that they can proceed to make necessary changes with full confidence in the stability of the directives which have been communicated.

Conclusion

Mr. Chairman and members of the Subcommittee, thank you again for inviting our participation in this hearing. We believe that all Federal programs for children handicaps and the provision of services for these children are better served through strong Congressional interest such as evidenced through conducting these types of hearings. We appreciate the time you have taken today. Please know that our National Office staff, and all State Directors of Special Education are ready and willing to work with the Committee, your staff, and all members of Congress to assist you in any way possible.

CHRONOLOGY OF EVENTS REGARDING IMPLEMENTATION OF THE NEW EARLY CHILDHOOD INITIATIVES ENACTED BY P.L. 99-457

1. Legislation signed into law by President Reagan.

   Date: October 8, 1986.

2. During the 1986 NASDSE Annual Meeting, the NASDSE members generated a set of questions and issues related to the new legislation. These were provided to OSEP.

   Date: November, 1986

3. During the OSEP sponsored early childhood meeting held in Washington DC, state and local professionals and parents representing special education, health, developmental disabilities and other agencies generated a set of issues, questions and recommendations regarding the new legislation. These were provided to OSEP.

   Date: November, 1986

4. Individuals throughout the country submitted questions via mail, SpecialNet and telephone to OSEP staff related to the new amendments. OSEP staff acknowledged the questions and indicated answers were being prepared.

   Date: November, 1986 - September, 1987

5. Projected dates for the publication of draft regulations of various sections of the law were announced by OSEP.

   Dates: March, 1987
   May, 1987
   June, 1987
   Fall, 1987

6. During the OSEP sponsored State Directors' Meeting in Washington, DC, questions and issues which had been raised in the previous months were discussed with OSEP staff. Concern was expressed that clarification of major issues related to how the determination of "bonus children" would be determined the rules for expending carryover funds from 1986, rules for distributing dollars within the state, and many others was critical to the success of the program and must be forthcoming.

   Date: March, 1987

7. At the request of the OSEP Deputy Director, NASDSE staff met to share all questions that NASDSE had been compiling relating to the new Preschool amendments.

   Date: April 1987

8. In response to questions generated by the Senate Appropriations Subcommittee Hearing, Madeleine Will stated that the Preschool State grants would be awarded in July and that she anticipated nothing that could/would alter or delay that award schedule.

   Date: April 23, 1987

9. Draft applications for both early intervention programs were mailed to states. At this point, these had not been approved by OMB.

   Date: May 15, 1987

10. Draft OSEP procedures for the estimation of "new" preschool children to be served in 1987-88 were mailed to states. These differed from the proposed procedures announced at the March meeting which many states had already used to calculate their state's estimate.

    Date: May 15, 1987

11. Draft data collection forms needed to implement OSEP proposed estimate collection procedures for "new" preschool children were published in the Federal Register.

    Date: May 22, 1987

12. NASDSE representatives met with the Director of OSEP to discuss Part H issues and questions. The NASDSE representatives offered assistance and support to OSEP while expressing concern that there had been no clarification thus far on most issues related to the implementation of Part H. The Director of OSEP committed to a clarification memo to assist states.

    Date: June 4, 1987

13. June 5 marked 240 days since the enactment of the law. This is the General Education Provisions Act (GEPA) deadline for the publication of final regulations implementing P.L. 99-457. As of this date, no draft regulations related to the implementation of the early intervention initiatives had been published for public comment.

    Date: June 5, 1987

14. Many states submitted applications to OSEP for both programs although these were submitted in response to the draft application guidelines OSEP sent in May. No OMB approved applications were available as of the third week in June.

    Date: June 1987

15. NASDSE representatives met with the Director of OSEP and staff to discuss issues related to the implementation of the Preschool amendments. The NASDSE representatives offered assistance and support while expressing concern that almost no clarification had been available so far and states were already planning and implementing the program for 1987-88. Issues raised since November, 1986 such as the legal use of carryover dollars and the required formula distributions had still not received clarification. The OSEP Director committed to a clarification memo similar to the one offered for Part H.

    Date: June 22, 1987

16. OMB approved both early intervention programs' application packages and the estimate procedures to be used by states in estimating "new children" to be served in 1987-88. These were mailed to states and received the first week in July.

    Date: June 23, 1987

17. Preschool allocations (Section 619) were legally available for award to the states.

    Date: July 1, 1987

18. The Director of OSEP met with the NASDSE Board of Directors and restated a commitment to provide clarification memos for the implementation of both early intervention programs. The NASDSE Board expressed great concern that issues and questions raised since the day the law was enacted had still not received clarification and no clarification memos had been issued.

    Date: July 14, 1987

19. OSEP published a memo "Clarification of States Questions Regarding the Preschool Grant Program".

    Date: August 4, 1987

20. OSEP published the Congressional Award document which was the first announcement of the per child allocations which were to be available for the "new bonus" children in the preschool program.

    Date: August 14, 1987

21. First awards for the Preschool Program and the Part H Program were mailed to some states.

    Date: week of August 7th

22. California applied to participate in the Part H Program; all states have applied to participate in both early intervention initiatives.

    Date: September 4, 1987

23. Not all state awards for the Preschool Grant program or the Part H Program have been made. The Part H questions clarification memo discussed at the June 4 meeting with the OSEP Director has not been sent. No draft regulations have been published.

    Date: September 23, 1987

FULL CHRONOLOGY OF PART D BOYCOTT

For the past month an ad hoc coalition of national organizations including American Association of Colleges for Teacher Educators (AACTE), American Speech-Language-Hearing Association (ASHA), The Council for Exceptional Children (CEC), Higher Education Consortium for Special Education (HECSE), National Association of State Directors of Special Education (NASDSE), and the Teacher Education Division (TED) together with members of the Congress, and wide sector of the special education community, particularly state directors of special education and personnel in institutions of higher education have been engaged in efforts to oppose the establishment by the U.S. Department of Education of a new, not required by law, personnel preparation program under Part D, Section 632, of the Education of the Handicapped Act (EHA). The following is an attempt to describe the events leading up to the Department's announcement of that program on May 27, 1987, and what has subsequently occurred. A word of caution, what we report in this memorandum is what we believe to be true. However, in the world of politics hard facts are often elusive and cause and effect relationships are hard to prove.

Background

In February 1985, President Reagan formally submitted to the Congress his proposed budget for fiscal year 1986. While on the whole the budget proposal for special education could be described as a "hold the line" budget in the area of personnel preparation an eighteen percent reduction was requested. The proposed reduction was justified in the budget as necessary because of "the Department's lack of data necessary to identify and target training funds on specific areas of shortage." The Congress rejected the Department's assertions and increased funding by $3.0 million.

In the FY 1987 proposed budget the President proposed even more drastic measures regarding personnel preparation for the same basic arguments. First, that FY 1986 funding should be reduced by 22 percent and that funding for FY 1987 should be reduced by 25 percent over actual appropriations for FY 1986. Again, the Congress rejected these recommendations and increased funding by $6.48 million. While this process was going on, the Congress undertook and completed the reauthorization of the Education of the Handicapped Act (P.L. 99-457). During the hearings on the reauthorization, the Administration requested that the Congress delay action for a year to allow the Administration to develop and propose amendments to the Act.

The Congress proceeded on its own timetable and the law was enacted on October 8, 1986. While P.L. 99-457 brought about significant advances in several areas of special education, the changes in Part D were modest.

Part D of EHA provides for federal financial assistance to prepare special education and related services personnel and to provide training to parents. There are four basic provisions under this Part. Section 631(a) establishes grants to institutions of higher education (IHE) and non-profit agencies for the preservice training of personnel. Section 631(b) establishes grants to IHEs and non-profit agencies for special projects to demonstrate new approaches to both preservice and in-service training. Section 631(c) establishes grants to non-profit organizations to provide training and information to parents. Section 632 REQUIRES the provision of grants to each state education agency (SEA) for preservice and inservice training of personnel and PERMITS similar grants to institutions of higher education. Section 632 historically provided aid to SEAs on a competitive basis. As a result of testimony before the Congress expressing concern over the competitive nature of the program, the Section was amended by P.L. 99-457 to provide for grants on a noncompetitive basis to each state.

In July 1986, the Department invited applications for grants under Section 631(a) from IHE's across a number of priorities. It should be noted that this announcement was based on the FY 1986 level of funding because the appropriations process for FY 1987 were not completed and secondly predated P.L. 99-457. In line with past experience, it was anticipated that if there was an increase in appropriation levels, as there was, then additional projects would be funded. IHE's were notified of whether they were funded by June 1, 1987. During this process several concerns began to surface. First, a number of IHE's whose grants were deemed approvable were not funded because the Department claimed there were insufficient funds available. Secondly, reports began to surface from within the Department about an internal struggle over Part D funds and how they would be allocated. These reports suggested that planning and budget personnel wanted to turn a greater proportion of the funds over to the states and move toward getting the federal government out of a direct role in personnel preparation. This was opposed, we understand, by personnel in the Office of Special Education Programs. Negotiations between these forces apparently went on for a number of months with full funding for Section 631(a) and regulations and funding for Section 632 held hostage pending a resolve.

The Issue

On May 27, 1987, the Department of Education issued in the FEDERAL REGISTER proposed regulations governing the training of personnel for the education of the handicapped under Section 632 of Part D of the Education of the Handicapped Act). In addition, the Department announced on the same date, notices of priorities and invitations for applications for grants under the proposed regulations. The proposed regulations for Section 632: (1) implement the noncompetitive state grant provision; and (2) establish a new, not required by law, discretionary competitive grant program for SEAs and IHEs with a thirty day public comment period expiring on June 26, 1987. At the same time, the Department proposed priorities for the SEA/IHE competitive grant program limiting the grants to preservice cooperative efforts between and requiring that grants be jointly signed by SEAs and IHEs. The public was invited to comment by June 26, 1987. Again, at the same time, the Department invited applications under both programs with a deadline for submission by July 13, 1987.

The invitation for SEA/IHE applications estimated that 100 grants would be funded at an average of $70,000. This totals $7 million. Later information from the Department suggested that the actual amount would be $6.3 million. These funds would otherwise have been available for IHE's under Section 631(a) or SEA's under Section 632.

On June 5, 1987, Senator Tom Harkin of Iowa, chairman of the Senate Subcommittee on the Handicapped, called Secretary of Education William Bennett to express his concern about this matter and his hope that the Secretary would reconsider the Department's position. When the Department expressed an unwillingness to reconsider, Senator Harkin sent a letter to the Secretary expressing his concerns:

1. "The policy of announcing applications for a new administratively created program, not required by law, before there is an opportunity for public or congressional reaction to the proposed regulations and priorities which established the program is not standard operating procedure."

2. "Input I have received from SEAs and IHEs, the projected grant recipients, suggests that the six week period from May 27, 1987 when this program was first unveiled to July 13, 1987, the deadline for submission is simply insufficient time to develop proposals for programs. This is particularly so since it requires joint efforts of SEAs and IHEs many of which do not have policies established to guide joint participation. Moreover, the scheduling of the deadline during the summer when most IHEs are not in session and faculty may not be available may preclude the participation of many qualified IHEs.

"I have been advised that the Department has been telling IHEs whose Section 631(a) applications were not funded, to secure SEA signatures and resubmit the applications under the new Section 632 competitive grant program. If this is the Department's intent there is no need for administratively establishing a new program and new regulations without opportunity for public comment. Why not fund the projects as originally submitted?"

3. "When the Congress appropriated funds for Part D and amended the law through P.L. 99-457 it never envisioned $7 million of the funds being diverted from established programs to a new program, not required by law, and not unveiled until two thirds of the way through the fiscal year. The appropriateness of the process should be reexamined."

4. "New initiatives should not be conducted at the expense of existing activities unless it can be demonstrated that the existing program is ineffective at meeting its purpose(s). To date no such evidence has been brought before the Congress, nor presented by the Department to justify the redirecting of resources from existing authorities to new ones. Yet this is what the Department has done. For example, the Department announced under the Section 631(a) competition that it would give priority to personnel preparation projects directed at rural, minority, transition, and infant service needs and that $1 million would be available for each of these priorities (the total is $4 million). Yet the Department did not fund these priorities at the levels announced and now proposes, instead, to spend $7 million on a new, previously unannounced initiative."

"Because of these concerns, I strongly urge you to use your authority to correct this situation by taking the following actions:"

1. "Immediately, withdraw the notice inviting applications for the new Section 632 competitive grant program for FY 1987."

2. "Reallocate the $7 million the Department intended to spend for the new initiative back to programs for which the funds were originally intended. I would strongly recommend that approximately 4.5 million dollars be added to Section 631(a) to fund grants that have already been submitted, reviewed and deemed approvable but not funded and that the remainder be allocated to SEA's under Section 632."

3. "Extend the comment period on the proposed regulations and the notice of proposed annual funding priorities by an additional thirty days to allow for greater public comment, and permit the application process for noncompetitive SEA grants to continue on schedule."

4. "Based on comments on the proposed regulations, initiate the competitive grant program next fiscal year, if considered appropriate."

The National Response

Following Senator Harkin's letter AACTE, ASHA, CEC, HECSE, NASDSE, and TED conveyed their support for his position and asked their memberships to communicate their views to the Department. After communications with their appropriate policy bodies, NASDSE, AACTE, HECSE, and TED asked that no SEA's or Institutions of Higher Education submit an application under the proposed competition.

Over the next several weeks other members of the Congress expressed their concern to the Secretary. A joint letter from Senators Kennedy, Simon, Metzenbaum, Adams, Pell, Weicker, Stafford, and Cochran (all members of the Senate Committee on Labor and Human Resources) supported Senator Harkin's position. Members of the House Subcommittee on Select Education, Major Owens (NY), Pat William (MT), and Mario Biaggi (NY) expressed similar concerns to the Secretary, but also challenged whether the proposed program met congressional intent:

"Last year the Congress reauthorized the Education of the Handicapped Act. In so doing we made changes in the existing discretionary programs, including changes to Part D which were intended to ensure that each State receive a noncompetitive grant under Part D, Section 632. In case a State did not apply for a grant, the Congress also provided authorization to make grants to institutions of higher education within that State, to ensure that the citizens of that State would benefit from needed training activities."

"It has come to our attention that the Department is not complying with Congressional intent. The regulations for Section 632 proposed by the Department in the May 27, 1987, FEDERAL REGISTER do implement the noncompetitive state grant provision. However, these regulations also establish a new, discretionary competitive grant program, not required by law, for SEAs and Institutions of Higher Education (IHEs) with a thirty day public comment period expiring on June 26, 1987."

Congressman Jim Jeffords (VT), vice chairman of the House Committee on Education and Labor, also expressed his concerns to the Secretary. It is our understanding that similar communications have come from other members of the Congress.

Proposed Solution

On Wednesday June 24, 1987, Madeleine Will, Assistant Secretary for OSERS met with representatives from the concerned organizations and congressional staff to offer a proposed settlement of the dispute. Assistant Secretary Will proposed that:

1. $5.3 million be reallocated back to Section 631(a).

2. $1 million be retained for the SEA/IHE competitive grants under Section 632.

3. The timeline for submitting applications be extended by two weeks.

4. Joint signatures between SEA's and IHE's not be required.

5. Based on the above, that the organizations call off the boycott.

6. The Department would issue a notice of inquiry to the field soliciting input on how such competitions should be conducted in the future.

After a very positive discussion with Mrs. Will, it was mutually agreed to continue pursuit of a solution along these lines. Following several conversations with Mrs. Will and her staff, all of which were positive, the following was proposed:

"1. The Department would reallocate $5.0 million from the proposed Section 632 competitive initiative to Section 631(a) for the purpose of funding already submitted, reviewed and approvable but not funded grant proposals in a manner:

a. consistent with and proportionately distributed to the priorities and funding levels set forth in the July 14, 1986, FEDERAL REGISTER notice of grant availability;
b. consistent with the review panel ratings of such proposals.

2. The Department would retain approximately $1. million (the remainder available) for the purpose of making grants for one year to promote cooperation to be used in the following manner:

a. SEAs would be the only eligible grant applicants and will provide evidence of appropriate participation by IHEs;

b. The focus of the grants would be expanded to permit the creation or support of model statewide efforts through consortia, committees, or task forces to gather data, plan or carry out preservice and inservice personnel development strategies consistent with the state's comprehensive system of personnel development. However, any funds for providing direct inservice training would come from sources other than this competition.

c. The selection criteria set forth in Section 319.21 of the proposed regulation would be revised to be consistent with the purposes and scope set forth above.

d. The July 13, 1987 deadline for applications will be extended by at least two weeks, and more if possible.

3. The revised program and priority set forth in item 2 would only be in existence during FY 1987 and would be reassessed, based upon public input. In conducting such a reassessment the Department would seek public input through:

a. an announcement in the FEDERAL REGISTER;

b. the convening of meetings with groups and individuals representing the parties directly involved."

At a meeting with Mrs. Will on June 26, 1987, which we thought would lead to a final agreement, the negotiations broke down for the following reasons:

1. While in principle they agreed with item 2(b), these grants were for personnel training and would actually have to train personnel to significant extent

2. Item 2(c) was unacceptable, insisting that selection criteria be limited to the merit of the training proposed.

3. they were hesitant to limit funding to states.

Because of previous conversations the Department's decision left us surprised and disappointed. That afternoon, in calls to the Congress, the Department announced that negotiations were over and that they would implement their initial compromise offer. It should be noted that these negotiations and decisions took place before the end of the public comment period.

Conclusions

We can only speculate as to why all of this has happened. First, there are forces in the Department that want to turn the funding of preservice personnel preparation over to the states, thus reducing the demand for federal resources and the cost of managing grant competitions. Second, there is strong opposition within the Department for providing federal financial support for inservice education. Third, while the rhetoric in the proposed program is about "cooperation" the Department is not interested in building systematically a true cooperation approach between IHEs and SEAs, rather a limited managerial relationship. Fourth, there is a significant distrust of SEAs to spend funds in a manner consistent with state needs.

While we are pleased that IHEs who competed fairly under the Section 631(a) competition and whose grants were judged approvable will receive the funds to which they were entitled, we can not embrace, on principle, the Department's "compromise".

Because we believe that true cooperation between SEAs and IHEs is essential for the future we can not support a program that while espousing that principle, violates the essential criteria necessary to make it work. While only a million dollars is now in question, we believe that all public funds should be wisely spent or not spent at all. Finally, the process the Department has used to create this program violates fair procedure and congressional intent. We do not believe that the field should condone such practice by participating in any economic benefit it might provide.

For these reasons we urge SEAs and IHEs to continue to boycott the proposed discretionary program and urge the Department to reallocate the remaining funds to the SEAs under the basic Section 632 competition. Further, we ask you to continue to express your views to members of the Congress. We will pursue, with the Congress, legislative initiatives to prevent situations like this from happening in the future.

MONITORING REPORTS
(In alphabetical order, as of September 15, 1987)

SITE VISIT DATES	STATE	FORMAL DRAFTS	FINAL REPORTS	DURATION
1/86	Arkansas	10/24/86	*	22 mos.
9/85	California	9/19/86	*	25 mos.
1/86	Georgia	10/3/86	*	22 mos.
9/85	Hawaii	11/12/86	3/18/87	18 mos.
11/85	Indiana	1/6/87	*	23 mos.
12/85	Kansas	1/6/87	*	13 mos.
7/85	Kentukcy	7/28/86	7/15/87	24 mos.
6/85	Louisiana	7/28/86	4/8/87	21 mos.
2/86	Maryland	1/20/87	*	20 mos.
4/85	Massachusetts	4/3/87	*	24 mos.
7/85	Minnesota	2/13/86	10/20/86	15 mos.
2/87	Mississippi	6/15/87	*	8 mos.
4/86	Nevada	1/20/87	*	18 mos.
1/86	Ohio	3/16/87	*	21 mos.
3/86	Oklahoma	1/21/87	7/22/87	16 mos.
12/86	Oregon	7/28/87	*	10 mos.
6/86	Rhode Island	3/11/87	*	16 mos.
6/85	South Carolina	12/2/85	12/9/86	18 mos.
4/86	Texas	3/11/87	*	18 mos.
3/86	West Virginia	3/20/87	*	19 mos.

In addition to the above comprehensive monitoring reports, a specific or limited monitoring report was issued, as follows:

Virginia 3/31/87 5/18/87

*No Final Report as of 9/15/87

Mr. **Silverstein**. Carol Berman?

Ms. **Berman**. Thank you, Mr. Silverstein.

I thank you for the invitation to comment on the implementation of Public Law 99-457, the Education of the Handicapped Act Amendments. This is a law that offers hope to today's handicapped infants and their families and to children yet unborn.

I represent the National Center for Clinical Infant Programs. We are an organization concerned with all infants, and with the health, mental health and development of all infants and toddlers and their families.

For the past five years, we have worked with multi-agency committees in 15 States, in a project funded by the Division of Maternal and Child Health, that is intended to improve services for handicapped infants and toddlers and their families.

I am accompanied today by Mrs. Viki Draper, who is the parent of two disabled children and a member of the Interagency Coordinating Council in the State of Washington, and by Mrs. Mary Elder, who is the Administrator of the Texas Early Childhood Intervention Program, which is the lead agency in the State of Texas.

My remarks reflect comments from all of the States that have been participating in our project for a number of years. And in response to a question put to the 15 States less than 10 days ago, attached to my testimony are statements from the liaisons from 10 of our 15 States, and I would like to submit, with your approval, next week, remarks from the rest of the States.

This hearing could not be more timely. First of all, it is exactly a year ago today that this law was signed—I think en route to Iceland, so happy birthday. And for the last three days, we have been meeting with our committees from our various States, debating issues that are relevant to this law.

I would like to say that while there are problems with the implementation of any law, there is a general sense of excitement about this legislation and anticipation of what is to come that the Congress should be pleased with.

I want to talk about just three areas very briefly—empowerment of parents; flexibility of the approaches that the law provides; and interagency collaboration, which are key features of what is happening now in the States.

The formal recognition that Public Law 99-457 offers of the primacy of parents through appointments as members of the Interagency Coordinating Council and through the required involvement in developing individualized family service plans' has already stirred national excitement. And I hope that you will ask Mrs. Draper questions about that.

The law also recognizes that States have unique systems and approaches, while still giving a national focus to the importance of early intervention. It is remarkable that all 50 States have chosen to participate in this elective program. This could not have happened had the law had rigid requirements to use a particular State agency structure or approach.

The variety of lead agency designations will be a fascinating study. It is important to recognize in this regard that the U.S. Department of Education will be challenged to process swiftly grant awards to the Departments of Health, Social Services, Mental Health, Developmental Disabilities Councils, and so forth, when it is more typical to relate to State and local education agencies.

I will yield to Mrs. Elder to respond to administrative questions, but will state simply that uncertainty as to the start and continuity of funding has been a problem for many States. It is essential that the Department develop a smooth process for working with a variety of agencies, because one of the most promising and important features of this law is the recognition that no one agency can or should be the intervenor for young, disabled children. An infant is not exclusively the province of health or education or any other agency or discipline. And the sooner that this is reflected in the practices of planners, service providers and third-party payers, the better the service system will work for disabled infants and their families.

The process that began before Public Law 99-457 became law continues, and the law is likely to make such collaboration more permanent. While we hear from time to time of agencies that misinterpret the concept of a lead agency as an excuse to abrogate their responsibility, it is much more typical to hear of joint planning, joint hearings, and cooperation. This is modelled at the Federal level by a committee of eight agencies whose enthusiastic representatives have already been meeting to facilitate the implementation of the law. We are really pleased to see this kind of enthusiasm at the Federal level. We have not seen it for a long time.

It is obviously far too early to offer to measure the successes or the shortcomings of Public Law 99-457, but our jury of 15 States votes to thank the Congress for this law, and we ask only that you seek to assure that the promises now made to disabled children be kept.

It would be a disaster if dollars that have been starting to flow to States stop or are diminished, now that States have opened the door of opportunity to these disabled infants and their parents.

Thank you

Mr. SILVERSTEIN. Thank you. I just wish Senator Weicker were here to have heard that testimony. Public Law 99-457 is something that he worked so hard on.

Ms. BERMAN. Thank you. We will pretend that Senator Weicker is here, because as far as we are concerned, he is a big hero.

Mr. SILVERSTEIN. Thank you.

[The prepared statement of Ms. Berman, with accompanying material, follows:]

TESTIMONY OF

CAROL BERMAN
ASSOCIATE DIRECTOR
NATIONAL CENTER FOR CLINICAL INFANT PROGRAMS
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202/347-0308

ON

THE EDUCATION OF THE HANDICAPPED AMENDMENTS OF 1987
(P.L. 99-457)

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

OCTOBER 6, 1987

Mr. Chairman and Members of the Subcommittee:

Thank you for the invitation to comment on the implementation of P.L. 99-457, the Education of the Handicapped Act Amendments of 1986, a law that offers hope to today's handicapped infants and their families and to millions of infants not yet even born. I will speak specifically to Part H, which relates to handicapped infants.

I represent the National Center for Clinical Infant Programs, an organization concerned with promotion of health, mental health and development of all children in the earliest years of life. For the past five years, we have worked with multi-agency committees in fifteen states, in a project intended to improve services for handicapped and at risk infants and their families. I am accompanied today by representatives from two of these states, Mary Elder, Administrator of the Early Childhood Intervention Program, which is the lead agency for implementation of Part H in Texas, and Viki Draper, a member of the Interagency Coordinating Committee in the State of Washington and a parent of two children with disabilities.. My remarks reflect comments on the implementation of this law from all of our fifteen project states, and from several advisors to our project in federal agencies and national organizations. Statements from ten states have been included in our written testimony, and I will be pleased to supply additional state or advisor responses later.

This hearing could not be more timely. It is the first anniversary of the signing of the law and, for the past three days, participants in our project - 128 of them from 15 states, from federal agencies and from national organizations - have been meeting to work through issues related to the implementation of Part H. While there are always problems to be ironed out with any new legislation, there is excitement about this law and its potential. I would like to stress three aspects: empowerment of parents, flexibility of approaches, and inter-agency collaboration.

Empowerment of Parents

The formal recognition in P.L. 99-457 of the primacy of parents, through appointments as members of the Interagency Coordinating Council, and through their required involvement in developing individual family service plans, has already stirred national excitement. I will defer questions about parents to Mrs. Draper.

Flexibility

The law also recognizes that states have unique systems and approaches, while still giving a national focus to the importance of early intervention. It is remarkable that all fifty states have opted to participate in this elective program. This could not have happened had the law imposed rigid requirements to use a particular agency structure or approach. The variety of lead agency designations will be a fascinating study. It is important to recognize in this regard that the U.S. Department of Education will be challenged to process swiftly grant awards to Departments of Health, Social Services, Mental Health, Developmental Disabilities, and so forth, when it is more typical to relate to state and local education agencies. I will yield to Mrs. Elder to respond to questions on administration, but will state simply that uncertainty as to the start and continuity of funding has been a problem for many states. It is essential that the Department develop a smooth process for working with a variety of agencies, because one of the most promising and important features of this new law is the recognition that no one agency nor discipline can or should be the intervenor for young disabled children. An infant is not exclusively the province of health, education, nor any other agency, and the sooner this is reflected in the practices of planners, service providers, and third party payors, the better the service system will work for disabled infants and their families.

Interagency Collaboration

The process that began before P.L. 99-457 became law continues, and the law is likely to make such collaboration more permanent. While we hear from time to time of agencies that misinterpret the concept of a lead agency as an excuse to abrogate their responsibity, it is more typical to learn of joint hearings, joint planning, and cooperation. This is modeled at the federal level by a committee of eight agencies, whose representatives have already been meeting to facilitate implementation of the law.

It is obviously far too early to offer to measure the successes or the shortcomings of P.L. 99-457, but our jury of fifteen states votes to thank the Congress for this law, and we ask only that you seek to assure that the promises now made to disabled children and their families are kept. It would be a disaster if dollars stop or diminish now that states have opened the door of opportunity to them. Thank you.

Implementation of P.L. 99-457- Part H: FLORIDA

By: Janet H. Evans, Perinatal Program Supervisor
Children's Medical Services
Department of Health and Rehabilitative Services

Nancy D. Thomas, Administrator
Office of Early Intervention
Department of Education

Florida was one of the first states to respond after the passage of P.L. 99-457. This federal legislation complimented Florida initiatives for enhancing services to preschool children at risk for developmental or educational problems. Since 1985 Florida has participated in Project Zero to Three which joins fifteen states in sharing information on the needs of young handicapped and at risk children. Florida also established a Prevention Task Force to address issues which impact on reducing handicaps in children. The 1986 Florida legislature passed the Handicap Prevention Act which requires the Departments of Education and Health and Rehabilitative Services to coordinate a continuum of services to prevent or minimize handicaps in young children by focusing services on maternity care and the first sixty months of life. In addition, in June of 1986, the State Board of Education approved a set of Developmental Directions for the provision of prekindergarten education programs for handicapped children to be implemented statewide by 1989-90. Further, the 1987 Florida Legislature passed a bill establishing developmental programs and follow-up for infants who require neonatal intensive care and for their families.

With this foundation, Florida promptly responded to P.L. 99-457 by designating the Department of Education as the lead agency. The members of the Florida Interagency Coordinating Council for Infants and Toddlers were appointed in December and the first organizaional meeting was held in March 1987. A planning guide for the implementation of P.L. 99-457 has been developed which addresses all requirements of the law and provides a framework for planning activities. In Florida, planning and implementation activities for P.L. 99-457 and the Florida Handicap Prevention Act will be closely coordinated.

The impact of implementation of P.L. 99-457 in Florida cannot be specifically determined at this point because the population to be served has not yet been defined. However, Florida will include "at risk" infants and toddlers in its service population. The exact definition for "at risk" is still being discussed. Florida has in the Handicap Prevention Act a very broad definition of preschool aged children at risk for developmental delay, as well as several program specific defintions of "at risk". The definition used for purposes of P.L. 99-457 will undoubtedly be coalesced from these various definitions.

A continuing positive impact of P.L. 99-457 has been an increase in communication and coordination of planning and service efforts for preschool children between the Department of Education and the Department of Health and Rehabilitative Services. The Department of Health and Rehabilitative Services has assigned staff to work with the Department of Education and the Interagency Council to ensure appropriate coordination in planning for implementation of P.L. 99-457. This coordination between departments and within departments is enhanced as Florida strives to implement the goals not only of our progressive state legislation but also the complimentary goals of the Infants and Toddlers Program.

Several of the issues which have been identified as needing clarification regarding their impact on the implementation of P.L. 99-457 include: 1) How broad a definition of "at risk" children is operational; 2) What will the fiscal impact of full implementation be for the state, local areas, families, etc. and what funding options are there in addition to the federal dollars (e.g. state funds- existing and new, third party payors - insurance and Medicaid); 3) Service planning is to include the family as participant and client. Care must be taken by planners and providers to respect each family's uniqueness and to respect cultural and ethnic differences. Resolution of these and other issues, as policy matters, will guide Florida in developing a comprehensive service continuum for handicapped and at risk infants and toddlers.

IMPLEMENTATION OF P.L. 99-457-PART H: HAWAII

By: FRANCES D. RIGGS, M.D., M.P.H.
Chief, Family Health Services Division
Department of Health, State of Hawaii

Hawaii looks forward to the implementation of P.L. 99-457 with eagerness and anticipation. The advent of this law has brought with it a much needed emphasis and a real focus for the overall area of handicapped infants and toddlers and their families, but especially in four very important parts.

First, it has re-highlighted the needs of the infants and toddlers zero to three years of age, bringing to the fore the gaps in service for handicapped and the at-risk for handicaps. It will cause us to renew our efforts to provide a full continuum of quality services in a more acceptable and accessible manner.

Secondly, it has brought the parents of these infants and toddlers very significantly into the whole process of the program from writing the grant proposal, through public hearings, to planning, inclusion on the interagency coordinating council and in selection of persons to staff the project. We will have a full-time parent coordinator on the paid staff to carry out the purposes of the grant. This will assist Hawaii in recognizing the parents as the tremendous resource and help they are, as well as assuring that the program assists and supports the parents to meet their needs in the process.

Thirdly, the importance of prevention of these handicaps and the early outreach, diagnosis and intervention for the handicapped and those at-risk of becoming handicapped has been underscored repeatedly. Hawaii recognizes the need to reduce not only the prevalence and incidence of diagnosed handicaps, but looks toward the very significant number of infants and toddlers who are delayed because of environmental and psychosocial reasons.

The fourth area of great significance is that of having qualified, well-trained, appropriate staff to provide the services needed. This is of such significance in Hawaii because of our isolation and the fact that sufficient numbers of trained professionals are not available in all disciplines.

This program requires real interagency program networking and collaboration. Hawaii will respond.

The major issues that will interfere with successful implementation of the most effective program here in Hawaii will be the lack of resources, both in manpower and financial. All avenues will be explored and utilized.

However, to serve all handicapped infants and toddlers plus those at-risk of becoming handicapped and their families is a staggering undertaking. The definitions for our target population will determine the parameters. Hawaii already serves about 800 infants and toddlers in the Infant Development Program.

Hawaii looks forward to the challenge P.L. 99-457 offers and we recognize the tremendous positive impact that will result if well done. We are awaiting the grant award.

IMPLEMENTATION OF P.L. 99-457-PART H: IOWA

BY

JULIANNE BECKETT
PARENT CONSULTANT
CHILD HEALTH SPECIALTY CLINICS

AND

JAMES A. BLACKMAN, M.D., M.P.H.
ASSOCIATE PROFESSOR OF PEDIATRICS

UNIVERSITY OF IOWA

RESPONSE TO PASSAGE OF P.L. 99-457: Iowa has had a legislative mandate for the provision of developmental and related services for children with disabilities beginning at birth since 1975. We feel very proud of the high quality of these services which are available to all citizens in the state. Thousands of young children and their families have been served and helped by this program. However, as knowledge about appropriate services for disabled infants and young children has advanced, including increased emphasis on integration of services and emphasis on family needs, the necessity of increased sophistication of services and collaboration among the various service-providing agencies has become dramatically apparent. The model for service delivery during the past 12 years has been an educational one. It is now apparent that with the very young child, education, social services, and health must work more closely together to meet the needs of very complex young children, such as those who are dependent upon technology for survival. Public Law 99-457 has provided the impetus for a reassessment of how services are delivered in this state. The governor has appointed an interagency council composed of professionals from all appropriate disciplines and agencies who may for the first time meet one another to discuss fresh approaches to serving disabled children and their families. It has become obvious that no single agency can adequately address all needs. There is great excitement about the prospects for implementation of this new legislation and, building upon the track record already attained in Iowa, we feel we have an opportunity to develop a model program.

EXPECTED IMPACT: The interagency coordinating council is scheduled to meet in October, 1987. Many decisions need to be made regarding how present services will be modified and what new services might be implemented. Most likely the biggest changes will come in the improved coordination between agencies, especially in serving medically fragile children and families with complex social situations. Parents will be brought into the decision making process at the state level as well as the individual case level. During the recent public hearings around the state regarding the implementation of the law in Iowa, parent responses were videotaped and will be analyzed further.

ISSUES AND NEEDS: The goal of providing comprehensive family centered services is clear. The means to achieving this goal will be challenging. Continued communication among states regarding the solutions to the problems of interagency collaboration, involvement of parents, and meeting the special needs of complex children will help in arriving at the goal more quickly and efficiently. Perhaps the number one concern is the availability of adequate funds to deliver the services that are hoped for. Public Law 99-457 is raising the expectations of service providers as well as service consumers. The success of this legislation may be hampered by inadequate funds or excessive red tape in acquiring funds for the programs that are envisioned. We hope that this issue will be addressed at the federal level.

IMPLEMENTATION OF P.L.99-457 PART H
KANSAS

VIRGINIA L. TUCKER, M.D.
MEDICAL DIRECTOR, MATERNAL AND CHILD HEALTH
LIAISON, PROJECT ZERO TO THREE

Response to Passage of P.L. 99-457

Passage of P.L. 99-457 allows the progression of unfolding opportunities toward the goal of provision of statewide, comprehensive, multidisciplinary, interagency services on a local level for infants and children with special needs and their families in Kansas. A brief review of events occurring in Kansas prior to October 8, 1986, the passage date of P.L. 99-457, demonstrates the appropriateness of its timing and potential for positive outcome:

1. 1977-1986. Special education served up to 400 infants and children to age three per year, through special education cooperatives supported by the Education for the Handicapped Act (EHA) and P.L. 89-313. Other than a pre-entry yearly physical examination, no medical input was included beyond occupational and physical therapy (neither guaranteed.

2. 1983. The Governor of Kansas, at the request of a parent of a child with Down Syndrome, appointed a task force to study whether the needs of young children with handicaps were being served.

3. 1984. Based on the task force report, the Governor, by executive order, established a Governor's Cabinet Subcommittee to study and develop techniques for solution of problems interfering with the attainment of comprehensive, multidisciplinary, interagency services for preschool children from birth through age five and their families. In order to ensure activities through early intervention and implementation, the members of the Cabinet Subcommittee were composed of Cabinet Secretaries of Social Rehabilitation Services Administration, Health and Environment, a representative from the State Board of Education and the Board of Regents of state universities, a parent and a member at large.

4. 1986. The Interagency Coordination Council on Early Childhood Developmental Services was created by legislative statute, composed of the key leaders of state agencies and boards, plus parents, and interested taxpayers.

5. July, 1987. The Governor designated the Kansas Department of Health and Environment the lead agency for development and implementation of P.L. 99-457 for infants and toddlers through age two and their families in Kansas. This occurred after joint hearings for health and education at three regional locations in the State. Parents, and private and public institutions expressed in-depth interest

in the project.

Expected Impact

The annual birthrate in Kansas is approximately 36,000. Using the incidence rate of 1% of infants born with handicaps and the prevalence rate of 3% of children to age three, approximately 3,000 infants and children and their families will benefit from P.L. 99-457 . During FY 1987 only 345 infants and children were identified and served through EHA and P.L. 89-313.

At the present time, the Kansas Department of Health and Environment, the designated lead agency, has issued requests for development of model demonstration projects by local private and public organizations and agenmcies throughout Kansas for special needs infants, toddlers and their parents. Over 50 requests for applicationa have been received from developmental centers, health departments, and other organizations interested in providing extended services and proposing projects. October 16 is the deadline for receiving applications for review by a seven member review team composed of representatives of the Coordinating Council for Early Childhood Development.

Issues and Needs

1. Turf issues between agencies is a continuing problem.

2. Meeting all of the designated criteria of the program by 1991 will be a continuing challenge.

3. Fiscal concerns with the Department of Health for issuance of statewide comprehensive services is always of concern.

4. Parents of high risk and handicapped children are so occupied/absorbed with the immediate needs of their children. It is hard for them to be productive in advisory councils and other long-range planning, even including long range needs of their children.

October 7, 1987

STATE OF MARYLAND
EXECUTIVE DEPARTMENT

WILLIAM DONALD SCHAEFER
GOVERNOR

OFFICE FOR CHILDREN AND YOUTH

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WENDY R. SHERMAN, SPECIAL SECRETARY

October 5, 1987

IMPLEMENTATION OF PL99-457 - PART H: MARYLAND

by: Laura Steele, Administrative
Officer, Governor's Office for
Children and Youth
(Lead Agency)

RESPONSE TO PASSAGE OF PL99-457:

Maryland has experienced the generation of a great deal of enthusiasm and expectancy around the potential of this new statute. Advocates, providers, state agencies and consumers have all expressed the hope that it will provide the impetus to expand what many have seen as a necessary, but a largely missing link in the service continum, that is, early intervention.

Maryland has had a state mandate to serve educationally handicapped children 0-21, since 1980. This additional mandate creates an opportunity for us to expand what our Child Find program is doing in serving infants and toddlers.

Perhaps one of the most significant aspects of PL99-457 is its focus on the family system. At both of our public hearings it was evident from parent's testimony, as well as advocates and providers, that being able to "legitimately" address the needs of the whole family, rather than soley the child, is a tremendously valuable component of the legislation.

There are a great many projects underway in Maryland, which provide services to infants, toddlers and families. Many who testified at the hearings believe 99-457 can be the construct which brings them together in a coherent early intervention system. This too has created much hopefulness towards the possibility of both institutionalizing prevention and early intervention.

EXPECTED IMPACT:

Prospectively, there are a number of ways children, families and the system will be affected by PL99-457.

- Bringing a focus to the family rather than only the child will give a broader, more sustained dimension to intervention services.
- Accomplishing the many tasks laid out in our goals/objectives should provide a much clearer picture of what our delivery system now looks like and how many gaps remain to be filled.

While we have some numbers, ex. those children identified through Child Find, infant stimulation programs and graduates of NICUs, we don't yet have a clear enough picture of who else needs early intervention. It is hoped this program will help identify those other populations.

Existing programs in Maryland already bring the major service departments together on a number of service and policy levels - the Interagency Council for PL99-457 provides an additional vehicle to_tackle issues affecting everyone in a collaborative, cooperative fashion.

Another critical piece of creating a service plan is how to develop enough resources to appropriately and adequately fund it. How to fund these new programs while not diminishing those already in place, will need to be one of the challenges this project addresses. In fact, there is an opportunity for us to now systematically explore new funding options for an interdisciplinary system of care.

Among critical questions of impact down the road, is how the potential of increased numbers of handicapped children will impact the school system. Will their responsibility be shaped differently? Will the advent of increased earlier intervention actually decrease the need for restrictive, costly placements later on, and save money, or will the outcome be the reverse? These questions provide impetus for us to study how school placements later on affect these children.

Maryland may be in a unique time when a number of prevention, early intervention programs/projects are converging simultaneously. It is our hope that these potential projects along with the resources they generate, will positively impact the overall early delivery system. These Projects include: PL99-457; a large grant from the Annie B. Casey Foundation addressing foster care and protective services; a grant from the Robert Wood Johnson Foundation for improving maternal and infant care. Additionally, the subcabinet for children is considering a focus on prevention, earlier intervention programs as a priority. Also, contained in our Interagency Plan for children, are a number of tasks which also engage issues pertaining to early intervention. The potential convergence of these and existing early intervention services can realize a network which will provide a cohesive force for early intervention programs across the board.

ISSUES AND NEEDS:

We do not know to what extent potential barriers or problems will impede implementation of the state plan. Potential problems include:

Likelihood that increased numbers of children and their families will be identified who need services, particularly if we incorporate those children/families "at-risk". Will there be adequate resources both in funding and in trained professionals to provide these services?

Once a family centered system for 0-3 has been established, what will be the impact on families then transitioning into an educationally based system with a focus on the child only?

Since Maryland already has programs for 0-3, what will be the impact on those programs when a new criteria for identification/program planning are used for this age group, while another for children 3 and older?

Another issue being raised regarding the limitations of existing resources is concern over whether new/expanded programs for additionally identified groups, particularly "at-risk" will be diverted from resources now used for children with known developmental handicaps.

Another difficult issue concerns referral mechanisms. We have not attained the level of awareness in physicians, of the necessity of referring families to appropriate resources as early as possible. Knowledge, or lack of it, about what and where resources exist in the State and local jurisdictions, also raises questions about appropriate referrals.

There are a number of policy issues in addition to the program concerns. How do we effectively move part of a system focussed on the family without losing clients in the process?

Does funding responsibility solely belong to the state via its service agencies? What kind of public/private partnerships need to be molded? How much burden can local jurisdictions assume?

Does accountability rest with the provider (lead) agency? Or, should there be some external effort at evaluation, accountability?

Another issue being raised is concern that the potential of new/expanded programs raises expectations of parents, when in fact all of their needs may not actually be met.

Because this is an entitlement there is concern about how due process issues will be addressed and who will be responsible for it.

Lastly, as we work to enlarge the scope of early intervention programs with federal dollars in the next few years, how will we, the state continue these new levels of services when the federal dollars are no longer there?

The Commonwealth of Massachusetts
Executive Office of Human Services
Department of Public Health
Division of Family Health Services
150 Tremont Street, Boston 02111

IMPLEMENTATION OF P.L. 99-457-PART H: Massachusetts

by Karl Kastorf, Director
Early Childhood Developmental Services Unit
Services for Handicapped Children

The passage of P.L. 99-457 has been particularly effective in spurring the development of collaborative planning with other state agency personnel in Massachusetts. Initiatives undertaken immediately after passage of P.L. 99-457 include a linkage with the Department of Social Services in strengthening the ties between early intervention and infant & toddler day care; the development of a working group that is beginning to address the needs of chronically ill, often-hositalized children; and the expanded recognition of the role of specialty providers in addressing the needs of children with low-incidence disorders. All of these issues were previously highlighted in the four meetings held to solicit public comment on Massachusetts' Part H Application.

With the addition of the cited initiatives, the Department of Public Health continues movement of the existing early intervention system toward entitlement to services. Currently, parents and providers as well as state agency personnel are greatly concerned with waiting lists for services, which now number approximately 500 families statewide, who may wait as long as nine months for services to begin. It is hoped that the impetus of P.L. 99-457 will increase attention in the Commonwealth to the need for expanded services for families with very young children.

Clearly it is imperative that the base of financial support be expanded to allow for the long range growth of the Massachusetts early intervention system. Toward this end, a bill is currently under consideration in the state legislature to mandate commercial insurance coverage of early intervention as a discrete service, as it is presently reimbursed under Medicaid.

/hmk

IMPLEMENTATION OF P.L. 99-457 PART H: NEW YORK

by Monica R. Meyer, M.D., Director
Bureau of Child & Adolescent Health
New York State Department of Health

The potential of P.L. 99-457 has generated considerable interest and enthusiam in New York State. The recognition by Congress of the importance of early intervention for infants and toddlers who have, or are at risk for, disabilities, and their families is most welcome.

New York currently spends more each year in State and local funds for early intervention programs than the entire national appropriation for Part H in FFY 1987. Not withstanding this fact, New York is participating in the Part H program with the aim of using the federal funds to initiate a grass-roots planning process that will result in better coordination, less fragmentation, and more effective outreach to unserved and underserved populations. The dollars will also be utilized to build cooperation and partnership among the various concerned State agencies and to plan for training programs generated by the needs of these children and their families.

At public hearings conducted by the State in July, parents, advocates, and service providers repeatedly urged that an assessment of the existing services and needs precede any major overhaul of the present system. Consonant with this recommendation, the Department of Health, as lead agency for Part H, plans to support the creation of 12-15 regional planning groups across the State. These groups, to be composed of parents, service providers, persons with disabilities, local officials and expert professionals, will be charged with conducting an inventory of existing early intervention resources and needs. Federal funds will be used to supply these groups with staff support, as well as to identify early intervention training needs and to design approaches to meet those needs.

The emphasis placed by P.L. 99-457 on interagency cooperation is welcomed in New York. In the conduct of the public hearings, and preparation of the State's Part H application, an interagency team was utilized. On the State, regional and local levels, continued interagency communication is imperative for designing a coordinated comprehensive and non-duplicative system and as such will be promoted.

A major concern remains the late release of Part H FFY 87 funds, resulting in the current stricture against spending after September 30, 1988. An extension of the time period within which to obligate and expend the first year monies is essential to the smooth, cost effective implementation of P.L. 99-457 in New York. Another concern is the eventual institution of regulations regarding Part H. Much creativity and free thinking has gone into planning for P.L. 99-457. It is critical that once regulations are in place, they not be destructive of these innovative planning efforts.

October 2, 1987

IMPLEMENTATION OF P.L. 99-457 - PART H: OREGON

by David W. Macfarlane M.D.
Interim Director, Crippled Childrens Division
Oregon Health Sciences University

Passage of P.L. 99-457 has resulted in a great deal of interest, activity and hope for an improved system of family centered community based care for disabled children and those with special health care needs. As these hearings occur, the Emergency Board of the State of Oregon is meeting to approve the implementation plans for P.L. 99-457.

Oregon has, for several years had a state law mandating educational services for very young handicapped children. The state law, however, was narrowly focused and failed to take advantage of many services available from other agencies and private sources. Planning for implementation of P.L. 99-457 has already elicited enthusiastic participation of public health, social services, private medicine and other groups essential to a comprehensive and coordinated system.

It is estimated that in Oregon, less than half of the eligible handicaped infants and children are currently being served and some categories of children at high risk and extreme medical fragility are excluded entirely. It is anticipated that the mandate and resources made available by the new law will permit not only an increase in the number of children receiving early intervention services but that a more coordinated care system will assure greater cost effectiveness and that the coordination and monitoring necessary to implement the law will assure that the children and families in greatest need receive services.

In Oregon, all primary education is supported by local tax bases. Funding of the current law is recognized to be inadequate to provide mandated early intervention services for all children and families in need. Therefore, the main impediment to full implementation of the law will be reluctance on the part of less affluent school districts to divert funds from other needed programs. Despite this there is strong hope that P.L. 99-457 can be fully implemented. The state is working toward a more equitable education support system and there is growing committment by other state agencies to help by pooling their resources collaboratively.

October 1,1987

Senator Tom Harkin
Senate Subcommittee on the Handicapped
U.S. Senate
Washington, D.C. 20510

Re: Implementation of P.L. 99-457 Part H.

Senator Harkin:

While I cannot report about the direct implementation of P.L. 99-457 in our state, I did, however, want to report to the committee about the anticipation , excitement, and solidarity over P.L. 99-457, that I have personally observed these past few months.

I was fortunate enough to live in a state that had an ECI program in place when my daughter, Leslie, was born with Down Syndrome in 1982. I noticed immediately that the services available to me all had one fundamental rule - parents must participate. In Texas, parents of children in ECI programs are participants. Not only do our parents participate in their child's program but we work to educate the public and especially our elected state officials about our needs and concerns. The parents I have talked to were glad to see this idea incorporated in P.L. 99-457.

I have also noticed that the last two months have carried us to an even higher level of involvement. With the direction of our state ECI Advisory Council we have endevored to form a statewide parent encouragement/advocacy network. Through our network parents can communicate with each other, be supportive of each other, and discuss issues that affect us all. While still in the formative stages, the response of parents, families, and others to our program has been very good. The anticipation of P.L. 99-457 being implemented soon has generated even more response. Parents express an overwhelming desire to have more impact on their child's program and wanting to have a stronger, more unified voice when decisions are made concerning ECI funded prgrams. With all the possibilities P.L. 99-457 will present to us, I have noticed the level of involvement and excitement is at an all time high for families directly affected by ECI programs.

I know I speak for many families in our state when I say "thanks" to you and the subcommitee for your work on the behalf of our special children. Thank you for giving us something to really be excited about.

Respectfully,

Vicki Sommers

Vicki Sommers
306 San Carlos Ct.
Irving , Tx 75062
Parent Advocacy Network Coordinator-Texas

Implementation of Public Law 99-457 - Part H: Texas

Mary Elder, Administrator
Texas Interagency Council on Early Childhood Intervention

The passage of Public Law 99-457 has had a tremendous impact on Texas. PL 99-457 will make it possible to reach 1143 infants who are currently on waiting lists or not receiving services. In addition, occupational therapy, physical therapy, speech therapy, and family and case management services will be increased to add to the comprehensive services available to children and their families.

For six years, Texas has used an interagency council to operate a statewide service program for children and families. Using state and local revenue, 62 community intervention programs served 9,000 infants and their families in 1986. Additionally the Texas Education Agency served 920 infants below the age of three. Although the Texas effort to provide comprehensive services is exemplary and state and local funding has been substantial, resources have only been able to reach 4.3 % of the children in need, and services have been unavailable in 50 counties. During the last biennium families and service providers worked together to inform Texas state legislators of the need for increased funding. However, due to Texas current economic difficulties, these efforts resulted in only a slight increase in state funding for early childhood services.

Prior to the passage of PL 99-457, Texas began planning to meet the identified needs currently not being met because of funding limitations. A five-year plan was developed with input from administrators, parents, and local service providers. With the passage of PL 99-457 and the resulting funds available to Texas, programs can now move toward implementing these plans. Comments on the five-year plan were collected at six regional public hearings with 63 people attending. The impact of PL 99-457 in Texas can be documented through activities in the following areas:

FAMILIES

A statewide network of families will be organized to provide education and support. A family services coordinator will be added to the state administrative staff to provide resources for family support groups, to plan local and statewide parent workshops, to assist local programs in addressing family needs, to coordinate policies related to the individualized family services plan, and to represent families in policy development.

SERVICE PROVIDERS

PL 99-457 will allow Texas to increase the frequency of services, to increase the array of services offered, to offer services at more locations, and to increase the number of children served. Paraprofessional and professional staff will be able to participate in inservice training designed to improve skills. Alternative models of service for high risk children, children in rural areas, and children with special medical needs will be funded, evaluated and expanded.

STATE ADMINISTRATION

On the administrative level, PL 99-457 monies will increase staffing, assist in developing personnel and program standards for service providers, provide a statewide training system, and improve data collection and planning. State administrators will be able to augment current public awareness activities and to include an awareness program for primary health care providers who identify and refer children with handicaps. The awareness program will consist of a toll-free statewide telephone number, a central resource directory, and the celebration of an ECI awareness week. Within five years, Texas will have a statewide system based at 23 sites for identifying infants at risk, monitoring their developmental progress, and referring them to intervention services.

The federal monies have generated optimism for the future as we strive to serve all developmentally delayed children in Texas. Texas infants with developmental delay and their families will benefit from the passage of PL 99-457 in many ways. There will be greater recognition for early intervention services, more young children will have access to comprehensive services, and staff at state and local levels will have access to training, resulting in more qualified personnel.

UTAH
PROMOTE PROTECT PREVENT
DEPARTMENT OF HEALTH

Norman H. Bangerter
Governor

Suzanne Dandoy, M.D., M.P.H.
Executive Director

September 29, 1987

Carol Berman, Associate Director
National Center for Clinical Infant Programs
733 Fifteenth Street, N.W., Suite 912
Washington, DC 20005

Dear Ms. Berman:

RE: Implementation of P.L. 99-457 - Part H in Utah

Our Governor has designated the Department of Health, Division of Family Health Services, as the lead agency for services to handicapped infants and toddlers. Our Interagency Coordinating Council has also been appointed, including Athleen Coyner, M.S., R.N., as chairperson. The Council has held three meetings so far and has formed five working subcommittees to address the following issues: 1) definitions and eligibility; 2) parent involvement and support; 3) child find and public awareness; 4) service delivery models; and 5) personnel development. Our application for federal funds has been completed including evidence of public participation. The three public hearings generated comments such as: "parent groups should be used in child find and early identification" and "programs must be flexible enough to match the family needs." The Division of Family Health Services has recently hired Chris Kaminsky, Ed.D., R.N., as program coordinator for these services.

All these efforts have significantly enhanced interagency coordination and planning because many members of the Interagency Coordinating Council are also serving on the Office of Education's Preschool Steering Committee, which is involved in planning services for handicapped preschoolers. Issues such as program transition at age 3 and consistency of eligibility criteria can be coordinated between the two agencies by this means. In addition, we expect to offer a broader continuum of services for infants and toddlers by providing health as well as therapy and special education services.

The most significant threat to the successful implementation of the new law is inadequate funding at the state and federal levels. This would obviously limit the amount of direct services that can be provided to these children and their families. Our public awareness efforts must, therefore, be increased in order to promote public and legislative support for these services.

Sincerely,

G. Delavan

George W. Delavan, M.D., Director
Handicapped Children's Services
P. O. Box 16650
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538-6165

0001H/ba

Peter C. van Dyck, M.D., M.P.H. • Division of Family Health Services

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October 13, 1987

Senator Tom Harkin
Chair, Subcommittee on the Handicapped
Committee on Labor and Human Resources
U.S. Senate
Washington, D.C. 20510-6300

Dear Senator Harkin:

Enclosed are comments from the States of New Jersey, North Carolina, Ohio and Washington that did not arrive in the mail in time to append to my October 8 testimony. Their authors and I would appreciate having them made as part of the hearing record. Also enclosed is an interagency agreement signed on the day of the hearing. It stands in evidence of the enthusiastic collaboration that is occurring at the federal level.

While we were of course disappointed that other commitments necessitated your leaving the hearing before our panel, we very much appreciated the opportunity to make a public statement and respond to questions that Mr. Silverstein posed for you.

We will continue to work with states concerning the implementation of Part H. I hope you will call on us again as you monitor this very important law.

With best wishes,

Sincerely,

Carol

Carol Berman
Associate Director

733 Fifteenth Street, NW, Suite 912, Washington, DC 20005 (202) 347-0308

A MEMORANDUM OF UNDERSTANDING

AMONG

THE OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE OFFICE OF HUMAN DEVELOPMENT SERVICES
THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES
THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

AND

THE DIVISION OF MATERNAL AND CHILD HEALTH

TO MOBILIZE AND ACCESS
NATIONAL RESOURCES
FOR
THE IMPLEMENTATION OF PUBLIC LAW 99-457

The Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS), the Acting Assistant Secretary of the Office of Human Development Services (OHDS), the Commissioner of the Administration for Children, Youth and Families (ACYF), the Director of the Division of Maternal and Child Health (MCH) and the Commissioner of the Administration on Developmental Disabilities (DD) hereby join forces to foster interagency support for young children with handicaps and their families. P.L. 99-457, the Education of the Handicapped Act Amendments of 1986, extends the provisions of Public Law 94-142 to children from age three and creates a new Federal discretionary early intervention program for handicapped and at-risk infants and toddlers.

As administrators of agencies with respective responsibilities to implement the legislation, to assure the availability of preschool services in the least restrictive environment and to assist states in providing quality health services for handicapped infants and children, we support the intent of P.L. 99-457.

The legislation stresses the importance of a coordinated, multi-agency approach to implementation. In keeping with the intent of the law, this memorandum of understanding initiates plans for a national model for interagency linkages under our administrative leadership.

We hereby agree to establish and support a Federal Interagency Coordinating Council composed of representatives of the Office of Special Education and Rehabilitative Services (OSERS) which includes the Office of Special Education Programs (OSEP) and the National Institute on Disability and Rehabilitation Research (NIDRR); the Office of Human Development Services (OHDS) which includes the Administration for Children, Youth and Families (ACYF) representing Project Head Start and the Children's Bureau, and the Administration on Developmental Disabilities (ADD); and the Division of Maternal and Child Health (MCH).

Other Federal agencies which provide or will provide services for young children with handicaps or who are developmentally delayed or at-risk and their families may be included following the establishment of the Federal Interagency Coordinating Council.

Section 682 of the Education of the Handicapped Amendments of 1986 requires the establishment of a State Interagency Coordinating Council in each participating State. Its membership is to include "members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor."

The Federal Interagency Coordinating Council will mirror the role the Congress has stipulated for the State Interagency Councils, complementing and supporting their efforts.

The Federal Interagency Coordinating Council shall (1) provide assistance to the agency with responsibility to administer P.L. 99-457 and its implementation by the States by identifying sources of fiscal support and other resources developed by or known to member agencies. The Federal Interagency Coordinating Council shall (2) foster the development of working cooperative agreements, such as the Intra-Agency Agreement between the Head Start Bureau and Maternal and Child Health for fiscal years 1987 through 1989. This memorandum of understanding will also foster the updating of existing agreements, such as the 1978 agreement between OSERS' predecessor and ACYF's predecessor which designated liaisons between the State Education Agencies and Project Head Start, and (3) provide timely information on opportunities to compete for Federal funds in areas related to early intervention and confer concerning funding priorities.

The Federal Interagency Coordinating Council will meet at least quarterly to develop specific action steps which promote a coordinated, interagency approach to sharing information and resources in the following areas.

I. Regulation, Program Guidance, and Priorities
II. Parent Participation
III. Identification of Children
IV. Materials and Resources
V. Training and Technical Assistance

The Federal Interagency Coordinating Council will issue guidance on these areas to programs and agencies funded by the members' respective Federal offices. The Council shall be chaired by the Assistant Secretary for Special Education.

We agree that specific strategies for promoting cooperative efforts in the implementation of P.L. 99-457 will be addressed in a national interagency conference to be held in the spring of 1988.

The Council may prepare a budget request for such activities as sponsoring early intervention conferences on interagency coordination and the dissemination of information.

On behalf of the children and families for whom P.L. 99-457 was passed, we pledge our commitment to the mobilization of all available resources to assure appropriate services for this nation's handicapped preschoolers and their families.

This memorandum of understanding will become effective upon the signatures of the approving officials of the respective Federal offices and will be updated annually.

Madeleine Will
Madeleine Will
Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education

OCT 6 1987
Date

Vince Hutchins
Vince L. Hutchins
Division of Maternal and Child Health
U.S. Department of Health and Human Services

10-8-87
Date

Dodie Livingston
Dodie Livingston
Commissioner
Administration for Children Youth and Families
U.S. Department of Health and Human Services

10 - 2 - 87
Date

Lucy Biggs
Lucy Biggs
Commissioner
Administration on Developmental Disabilities
U.S. Department of Health and Human Services

10 - 2 - 87
Date

Phillip N Hawkes
Phillip N. Hawkes
Acting Assistant Secretary
Office of Human Development Services
U.S. Department of Health and Human Services

10 - 2 - 87
Date

Implementation of PL 99-457-Part H:
New Jersey by Noreen Gallagher
Marianne Chisesi
Celeste F. Andriot
Gwen Ehler

Expected Impact:

In New Jersey there as been a long standing commitment to provide quality services to handicapped children birth to three years. The state supports early intervention programs that are comprehensive, interdisciplinary programs designed to meet the physical, sensory, communicative, cognitive and social-emotional needs of handicapped children between birth to age three years.

In defining the population to be served under PL 99-457 New Jersey will explore the populations which are currently not served by state funded EIP services, specifically the at risk population and will also look toward the development of alternative methods of service delivery for the birth to three year population. In New Jersey we look forward to improving existing services and expanding services to underserved populations.

The Department of Education will, with PL 99-457 funding, develop and implement a statewide system to provide technical assistance, training and professional development activities for providers of early intervention program and services.

The Early Intervention Program agencies will have the opportunity to improve the quality of services to young handicapped children by receiving mini-grants from the Department of Education for the purpose of staff development.

On the state level high risk follow-up tracking will be expanded with PL 99-457 funding to include graduates of level IIA and II nurseries who meet the established high risk criteria (currently support and statewide tracking is limited to level III nurseries - nursery designations are made by the Department of Health).

Additionally, with PL 99-457 support the Department of Human Services, will be providing consultation and in-service training to local day care centers for the purpose of developing a greater awareness of developmental milestones and resources available if a child is suspected of having a delay and developing a curriculum to train staff in ways to minimize the effects of social and family stresses on a child's development.

IMPLEMENTATION OF P.L. 99-457 - PART H
NORTH CAROLINA

BY
Gene Perrotta, M.S.W., M.Ed.
Public Health Program Consultant

Liaison to Project Zero to Three

1. North Carolina's response to the passage of P.L. 99-457.

   The response among state and local policy makers responsible for health, mental health-mental retardation, and educational programs for infants and toddlers targeted in Part H of P.L. 99-457 has generally been enthusiastic in North Carolina. Observers and administrators view the law as an opportunity to fulfill the so-called "continuum of services" which had been conceptualized in the mid-1970s. The current activity among policy-makers and administrators is a continuation of an initiative, begun under the state education agency's state plan grant, to develop an interagency comprehensive preschool plan. The philosophy of many contributors to the process, which started before the passage of P.L. 99-452, was to address the needs of our birth-to-three population as well as those of three, four, and five year olds in one plan. Once the new federal legislation passed, administrators of our state health and mental health-mental retardation agencies approached the Secretary of Human Resources, who in turn persuaded the Governor to apply for the funds provided under the law. The leadership within our state education agency had agreed to concentrate their planning efforts on the three-to-five year old population while the Department of Human Resources will address those from birth to three years. Subsequently, the Secretary appointed the Division of Mental Health, Mental Retardation, and Substance Abuse Services to administer the application and implementation of the grant. The process of establishing responsibility for the Infant and Toddler grant has illuminated the compelling need for agencies to collaborate, in view of the fact that existing birth-to-three programs are distributed among several state agencies, such as the Division of Health Services, Services for the Blind, and Social Services. Our continuing challenge is to manage implementation of the grant efficiently and effectively while sustaining interagency participation. The grant calls for establishment of a state management/implementation team toward this end.

2. The expected impact of P.L. 99-457 in North Carolina

   Initially, the funds allocated through P.L. 99-457 will help to place home-based early intervention programs in unserved or underserved locations of the state. This will probably mean about 550 unserved children and 1100 of their family members will receive home-based early intervention. We expect that some of the funds will also be spent to improve the follow-up of about 1000 high risk infants discharged from neonatal intensive care nurseries, where too many infants are reportedly lost from care during the first year of life. The remainder of our allocation will be set aside for a state-level staff position and staff development and training of the professionals who provide the services called for in the law.

The public awareness provisions in the law also establish a framework for linking together North Carolina's early identification and intervention programs. This could increase the number of infants with known or suspected disabling conditions within the first three years of life. In turn, the numbers of identifiable preschoolers with conditions likely to affect their school performance will probably increase overtime, resulting from improved early identification and tracking initiatives which health officials are planning.

The law forces much needed attention on parent participation in policy-making and individual care planning. The requirements under the law should help to develop a power base for families which has been lacking often in the state's health and developmental programs. It is too early to tell how receptive the administrative establishment and professional service providers will take to sharing responsibility with parents. Nonetheless, the public agency officials have expressed an appreciation of the parent-professional partnership ideas, and some have been advocating for more parents on our decision-making bodies and innovative family-centered services in the future.

We had already begun to envision new, flexible, non-categorical types of programs for our high-risk and handicapped infants, toddlers, and families in our state planning. P.L. 99-457 reinforced our thinking and encouraged us to consider possibilities for service delivery which have lain dormant for too long. The major problem lies in there being too little resources to accomplish the changes on our drawing boards. Some of us are concerned that we will not be able to keep up with rising expectations.

A major unknown dimension of the Law is the matter of transitioning infants to preschool services for handicapped youngsters. Much work needs to be done before education agencies and early intervention agencies adopt the same philosophies of programming, eligibility criteria, and standards. In North Carolina, we have invested much time and energy already in an interagency planning process which, we hope, will affect better transitions for infants and their families from health and development-oriented programs to education-oriented programs.

3. Issues and Needs

There are numerous issues and needs which remain to be addressed. Some of the more immediate questions to consider are:

How will we fund the programs/initiatives started with dollars under P.L. 99-457 in the long run?

As expectations among parents and professionals rise, will we be able to capture enough funds to do all that needs to be done?

Can we overcome the tendencies toward "turf control" and "self-interest" when dollars and cents are at stake, in spite of our best intentions?

Sorry, I have no solutions here. But we are trying to be vigilant because the cause is so worthwhile.

IMPLEMENTATION OF P.L.99-457-PART H: OHIO

by Kathryn K. Peppe, R.N., M.S., Project Zero to Three Liaison

RESPONSE TO PASSAGE OF P.L.99-457:

Much enthusiasm has been generated in Ohio since the Ohio Department of Health, Division of Maternal and Child Health, was designated as the lead agency for implementation of the Part H-Infants and Toddlers with Handicaps Program. The following major accomplishments have been made since that time:

1. Using an interagency approach, the application for funding was completed and submitted to the U.S. Department of Education. Included in this document was an analysis of the current level of funding expended by state agencies for services to children from birth to three years of age, totalling $216,231,314 for Fiscal Year 1987. Ohio recently received notice of its award of $2,021,705 as its funding level under this program for Fiscal Year 1987.

2. Public hearings were held in Columbus and Akron during July to receive public testimony on the Department of Health's application for funding. Over 800 notices of the hearings were mailed throughout the state and hearing notices were published in seven newspapers. As a result, 48 people attended the public hearings; 5 persons presented verbal testimony and 4 persons provided written comments. Testimony indicated general satisfaction with the Ohio Department of Health as the lead agency and with the application's plans. The department was urged to improve the child find and public awareness efforts in the state and to develop a central point for information and referral for multiple service agencies. It is also significant that there was clear support for the need for this legislation.

3. The Ohio Interagency Early Intervention Council has been appointed by the governor and has its direction set by an Executive Order. The council membership includes three dynamic parents (one whose child is under one year of age and another whose child is technologically dependent), a pediatrician, local early intervention service providers, a Head Start director, a psychologist, two legislators and representatives of five state agencies. The Council has met twice and plans to meet six times yearly. It has established standing committees to examine issues related to defining the target population, child find, transition services, legislation and standards,

individualized family service plans and service coordination. The Council is now considering extension of services to the at-risk population.

4. Numerous presentations have been made throughout the state and at national conferences describing Ohio's plans for implementing this program. One presentation was at a continuing education seminar for congressional and White House staffers sponsored by the National Health Policy Forum.

5. The Ohio Department of Health is initiating recruitment of fulltime staff for the early intervention program. In the meantime, staff of other state agencies have been borrowed to assist in drafting the various requests for proposals that will be issued to communities throughout the state to enable them to access the funds made available under this program. The Ohio Interagency Early Intervention Council will review the request for proposals before they are issued statewide. It is expected that each county will develop a local collaborative group of agencies delivering early intervention services and that this group will determine which agency will serve as the local lead agency and fiscal agent. The local collaborative groups will decide the use of funds for early intervention services within the guidelines provided by the Ohio Department of Health.

EXPECTED IMPACT:

It is anticipated that the Ohio Interagency Early Intervention Council will take action in November to assure that at-risk children as well as those who are handicapped receive early intervention services. Such an action will mean that an additional 65,900 children under three years of age will be eligible for services. The Ohio Developmental Disabilities Planning Council has already adopted the position that these children should be served as a means of preventing developmental delays and communicated their position with the Ohio Interagency Early Intervention Council for consideration.

The interest and support that has been generated on behalf of the Ohio Department of Health's implementation of this program has been outstanding, both from the local levels and from other state agencies. As an example, state agencies cooperated fully in providing information about their current level of funding for children under three years of age even when computer systems and lack of data by age groupings made the task extremely difficult. State agency personnel pursued the issue until they were able to provide the best information possible. The Ohio Department of Health additionally collected information on current levels of funding for children from three to five years of age and forwarded this information to the Ohio Department of Education for their use in implementing Title II of P.L.99-457.

Communication between state agencies has been facilitated by the efforts of the Ohio Department of Health to implement the Part H program. It is unprecedented that one state agency has loaned the use its staff to another state agency to assist in the initiation of a program viewed as important by both agencies.

ISSUES AND NEEDS:

Ohio views the greatest need at this time to be the issuance of federal regulations for the Part H program. Until this occurs, there will continue to be some lack of clarity about issues related to the implementation of this program.

IMPLEMENTATION OF P.L. 99-457, PART H

STATE OF WASHINGTON

Susan W. Baxter, Ph.D.

Washington State's Birth to Six Coordinating Council appreciates the opportunity to address the Senate Subcommittee on the Handicapped regarding P.L. 99-457 part H.

Over the past three years the State of Washington has taken advantage of opportunities to plan for and organize services that have been fostered by the state plan grants, (OSEP) the National Zero to Three Project (MCH) and discretionary project funding provided by the Office of Special Education Programs and the Office of Maternal and Child Health.

The passage of P.L. 99-457 comes at a critical point for the state. It provided the necessary momentum for us to move beyond a purely planning stage. Language of this law is fully compatible with the direction Washington has chosen to go in its planning process.

In particular we find the following points particularly important and significant to families in Washington state:

o Family focused approach as opposed to focus on a disability;

o Non-categorical approach; inclusion of "at-risk" in potential target population;

o Primary role of parents/consumers in all facets of the program from participation on the Coordinating Council to participation as a member of the assessment team;

o Opportunity to have states identify most appropriate lead agency; opportunity for shared management (and responsibilities) across serving agencies through the Coordinating Council.

o Emphasis an interagency coordination at all levels; this offers states and communities the opportunity to team up to address state and community priorities using unique community resources which are often non-categorical in nature.

Areas of Concern Expressed by Washington's Birth to Six Coordinating Council:

o Decision-makers need assurance that federal funding will be maintained and enhanced as needed once states commit to full services to all eligible families;

The most critical aspect of care for at risk/disabled children under three is basic health care. To maximize the potential of P.L. 99-457 Part H, we need to have a guaranteed basic health care plan for all children

o Federal programs providing policy direction and funding will need to collaborate as well, minimizing policy barriers that may currently inhibit states from collaborating more effectively.

Thank you again for this opportunity to address the committee, and thank you also for supporting this very important piece of legislation.

Mr. SILVERSTEIN. Reed Martin, please.

Mr. MARTIN. Thank you for inviting me to testify here today about the Handicapped Children's Protection Act. I have submitted written testimony and want to ask that that be made a part of the record.

Senator Harkin and Senator Weicker began this morning, characterizing these hearings as being concerned with the implementation of laws to aid citizens with disabilities. And I think everyone should see the Handicapped Children's Protection Act as definitely an aid to implementation of the very basic Federal special education laws, the Education of the Handicapped Act and its various amendments.

In this past year, in which the Handicapped Children's Protection Act has become effective, we have learned exactly how vital that Act is to the implementation of the Education of the Handicapped Act.

I had the privilege of representing citizens with disabilities even before the passage of the Education for All Children Act back in 1975, and I saw the incredible impact of that Act on the lives of children with handicaps beginning in 1977. I have had the chance to represent quite a few hundred children in the 10 years of implementation of the Education for All Handicapped Children Act in Texas, but have also consulted with private and public attorneys in about 35 other States.

The impact in 1984 of the Supreme Court case of *Smith* v. *Robinson* was just staggering, in saying that attorney fees could not be reimbursed if a parent were to bring an action and be right and prevail. We found all across the country that parents were discouraged; some schools were encouraged, we found, to feel that they did not have to take parent complaints seriously. The private Bar, which we had been trying for years to get involved in these cases, practically evaporated, for good reason. And even the protection and advocacy systems like the one I work for in Texas reported a real discouragement with parents.

Now, the protection and advocacy groups do not charge parents for attorneys' fees, and you would think, well, we could continue business as usual. Well, in fact, the parents felt the message from the Supreme Court was, "We do not want handicapped children cases in court." And so as a consequence, there was a great deal of discouragement.

With the Handicapped Children's Protection Act being passed a year ago, we find parents now encouraged to pursue claims, not necessarily in court, but to once again attend IEP meetings, the Individualized Education Program planning meetings, and assert the interests of their children.

Now, there has not been a flood of litigation. I know during the deliberations in Congress, there was a concern that there was going to be a flood of litigation when attorneys found that they had fees available. That has not been the case.

I had the privilege of representing the Tatro family, who were involved in lobbying for this act, and in attempting to get them attorneys' fees under this act, and as a consequence, a lot of people from around the country have contacted me, and we have shared a lot of information. And there really has not been any kind of outpouring of litigation.

Let me also say—and I know the Senators would be interested in knowing—that the children who have been served by attorney fee awards—and 34 cases have been reported so far under this act—the children who have been served by that act have been exactly the kind of children who have been the concern of this committee all along—mentally retarded, children with emotional disturbances, orthopedic problems, epilepsy, spina bifida, cerebral palsy, autism—a full range of children have been served.

One clear sentiment that I wanted to mention that we read from the legislative history was to do everything possible short of litigation, not rush to litigation. I want to assure you that publicly-funded agencies like the one I work for take that very seriously and handle the vast majority of requests for help much short of involving an attorney or involving a court, and we try to do everything possible through negotiation.

Let me also say that the balancing safeguards that the Congress wrote into the act were very wise, and I think are working. I find that schools are now taking more seriously parent complaints under the Handicapped Children's Protection Act; parents are aware of the advantages, and the schools are aware of the advantages of early settlement of complaints. Both parties are aware of the terrific disadvantage built into the act of seeming to protract the proceedings. And schools are aware that violating procedural safeguards, although they seem to temporarily give an advantage over an uninformed parent, can cost them dearly in the long run.

So the litigation under the Handicapped Children's Protection Act has been largely very supportive. The Fifth Circuit referred to the act and called Congress' action exemplary, and said you had "acted swiftly, decisively, and with uncharacteristic clarity" to correct a judicial misinterpretation.

As one who has litigated at the Fifth Circuit, let me say getting that kind of approval is very high indeed.

However, there has been some litigation that shows that there is still a misinterpretation or a lack of clarity about congressional intent. Let me mention several things that we have felt were clear in Congress' intent. For example, that one could in fact be reimbursed for fees that were incurred in administrative proceedings; and secondly, if one prevailed at the administrative level, and the case settled and did not go forward into court on a substantive issue, that in fact the attorney would be authorized to go into court for the limited purpose of a fee award. Third, we have assumed that schools should notify parents about the Handicapped Children's Protection Act at the same time they notify them as required in regard to their other procedural rights.

We also feel that fees are awardable to publicly-funded agencies on the same basis as they are to private attorneys, although there have been a couple of cases recently that I mentioned in my written testimony that deny those awards.

We have assumed that section 2 of the Handicapped Children's Protection Act is retroactively applied to cases even though no longer pending, so long as they were pending on or after July 3, 1984. As I mentioned, I represent the Tatro family in their continuing effort to receive attorneys' fees under that act. In Texas, both the State Board of Education and the local district involved have said that the act is unconstitutional. We won that point at the District Court, but both the State and the local agencies are now fighting us for re-hearing, so the saga of the Tatro family continues in its eighth year of attempting to get some resolution.

We also have assumed that section 3 of the Handicapped Children's Protection Act, dealing with section 504, while not retroactively applied to revive cases no longer pending, does apply to cases pending at the time of enactment.

And finally, we feel that it is clear from the act and the legislative history that the public should have better access to hearing officer decisions and the interpretation of law in a State that comes through those hearing officer decisions.

Mr. SILVERSTEIN. Thank you.

[The prepared statement of Mr. Martin follows:]

STATEMENT OF

REED MARTIN, ATTORNEY AT LAW

ADVOCACY, INCORPORATED, AUSTIN, TEXAS

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

with respect to

THE HANDICAPPED CHILDREN'S PROTECTION ACT OF 1986

PUBLIC LAW 99-372

October 8, 1987

Mr. Chairman, Members of the Subcommittee on the Handicapped:

I am **Reed Martin**, an attorney with Advocacy, Incorporated, in Texas, one of the Congressionally created "Protection and Advocacy" systems.

Thank you for inviting me to appear before you to comment on the implementation of the Handicapped Children's Protection Act of 1986 (HCPA). That Act is vital to the maintenance of the protections established under the Education for All Handicapped Children Act of 1975 (EAHCA).

The Reasonableness of Awarding Attorney Fees

I have had the privilege of representing parents of children with disabilities during the full ten years of implementation of the EAHCA. During that time I initiated cases in Texas and consulted on litigation in 35 other states. Attorneys' fees were awarded in much of that litigation under 29 U.S.C. 794a and 42 U.S.C. 1988. I know that I received fees in every case I initiated from 1977 to 1984. But in Smith v. Robinson, 468 U.S. 992 (1984), the Supreme Court almost made the EAHCA inaccessible by barring attorney fee awards.

The impact was clear and immediate. At the time Smith was decided, I was employed by Advocacy, Inc. and prospective clients were not being asked to bear fees but still the message from the Supreme Court disheartened and discouraged parents while strengthening the resistance of school districts. In more than one case I was told mockingly, "If you don't like it, sue us." For seven years I had worked to develop the interest of the private bar in taking meritorious cases (one of my training sessions secured the private attorney who began Tatro v. State of Texas which eventually reached the Supreme Court). But after Smith, the response of the private bar understandably was reduced.

Congress has long recognized the importance of allowing attorneys' fees if civil rights acts like the EAHCA are to be enforced. In 1976, while considering the Civil Rights Attorney's Fees Awards Act, the Senate Judiciary Committee reaffirmed: "Not to award counsel fees in cases such as this would be tantamount to repealing the act itself by frustrating its basic purpose ... Without counsel fees the grant of Federal jurisdiction is but an empty gesture." Senate Report No. 94-1011 at page 3. When considering the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, the House Report indicated the need to allow attorneys' fees under Section 504 if individuals with handicaps were to secure the protections guaranteed to them by that Act. House Report No. 95-149 at page 21. In the twenty-five month hiatus between Smith and the HCPA, we learned how correct Congress was in seeing that attorney fee awards are essential if parents are to have access to the EAHCA.

Litigation under the HCPA

At this date there have been just over thirty published decisions under the HCPA. That is hardly the flood of litigation that some critics of the HCPA feared. Although the cases being reported now were largely begun prior to enactment of the HCPA, and are thus not in response to the availability of attorney fee awards, I have not seen any increase in litigation activity because of the HCPA. Since the time I was invited to testify I have contacted a number of agencies around the country to get their assessment and the experience seems to be similar to that in Texas.

The balancing safeguards that Congress wrote into the HCPA seem to be producing the desired result: parties are aware of the advantage of early settlement; parties are aware of the great disadvantage of seeming to protract the proceedings; and school districts have a heightened awareness that a violation of the procedural safeguards, which might give them a temporary advantage over an uninformed parent, can cost them dearly in the long run.

Judicial interpretation is generally supportive of the Act. The Fifth Circuit, in its first review of the HCPA, praised Congress:

> "We are often critical of Congress for writing vague or confusing laws - laws that can defy rational judicial interpretation. Indeed, on occasion it seems that the political processes ensure an oxymoronic exercise of conscious congressional ambiguity, which forces the judiciary into the delphic realm of augury and soothsaying. Normally the courts must divine congressional intent or statutory policy to dispose of the issue at hand. This is not such a case, however. Congress read the Supreme Court's decision in Smith and acted swiftly, decisively, and with uncharacteristic clarity to correct what it viewed as a judicial misinterpretation of its intent. Such attentive interaction between the First and Third Branches is all too rare, and exemplary of the way the democratic process should work in our system of government."

Fontenot v. Louisiana Board of Education, 805 F.2d 1222 (5th Cir. 1986) at 1223.

The litigation has generally clustered around four issues in the thirty-plus cases:

Prevailing parties. Five cases have dealt with the issue of what a "prevailing party" is under the HCPA and have found clear guidance.

Fees at the administrative level. Thirteen decisions have addressed whether fees incurred for representation in exhausting administrative remedies are allowed. Twelve have answered affirmatively but one District Court in Delaware refused.

Fees to publicly supported attorneys. During deliberations on the HCPA, Congress considered whether to allow fees earned by legal services agencies and Protection and Advocacy systems such as the one for which I work. Only one case has considered this issue and refused to award fees to a protection and advocacy attorney since his salary was federally funded. The court observed that the HCPA states "the court, in its discretion, may award" and decided it was a reasonable exercise of discretion to refuse fees earned in that case.

Retroactivity. Half the reported decisions turn on the issue of retroactivity. Section 3 of the HCPA makes Section 504 available once again, overturning *Smith v. Robinson*. However, the part of the HCPA dealing with retroactivity omits mention of Section 3. Consequently, five decisions have ruled that Section 504 claims cannot be applied retroactively.

Although Section 2 is made specifically retroactive in the Act, it has been challenged in thirteen cases. The arguments have been that retroactivity is unconstitutional because it violates the doctrine of separation of powers, the contract clause, or the due process clause. Twelve decisions have upheld constitutionality but one, in Georgia, held the Act unconstitutional if it were applied to a case in which there was a final order denying attorneys' fees prior to the enactment of the HCPA.

I am involved directly in one case in which there is a constitutional challenge by both state and local defendants. On July 5, 1984, the Supreme Court ruled in Irving Independent School District v. Tatro, 468 U.S. 883 (1984). That same day, Smith v. Robinson was decided. Although the Tatros prevailed on the issue before the Court, the provision of school health services to their daughter, the Court denied attorneys fees under Smith. Twenty-five months later, when the HCPA was enacted, providing in Section 2 for attorneys fees and in Section 5 for retroactive application of Section 2, we petitioned for an award. The local school district defendant countered that the HCPA was unconstitutional as a violation of separation of powers. Their argument was that a final judgment on attorneys fees had been rendered by the judicial branch and that the legislative branch could not overturn it.

We responded with the following argument in support of the HCPA:

> "The constitutionality of retroactive legislation has been exhaustively reviewed in 'The Supreme Court and the Constitutionality of Retroactive Legislation' by Charles B. Hochman, 73 Harv. L. Rev. 692 (1960) and 'Constitutional and Legislative Considerations in Retroactive Lawmaking' by W. David Slawson, 48 Calif. L. Rev. 216 (1960). Their

review of judicial scrutiny of retroactivity shows that courts have focused primarily on three areas: how unsettling the retroactivity is; whether parties have changed their position in reliance; and the overall equity of the situation.

"Concern over the unsettling nature of retroactivity reflects 'the principle that a person should be able to plan his conduct with reasonable certainty of the legal consequences.' Hochman, supra, at 692. The concern, expressed as far back as The Federalist, is to protect against the 'fluctuating policy' of a legislative body. The Federalist, No. 44, at 279 (Lodge ed. 1888). But in the instant case, it is not retroactivity which caused uncertainty or fluctuation -- it was the decision in Smith. The retroactivity of the HCPA restored certainty. At the time the Tatro case was begun, the expectation was that a prevailing parent could recover attorneys' fees. Such awards had been the rule in Texas and, in fact, the Tatros had been awarded fees at the District Court and Fifth Circuit levels. When the Smith theory (fees are not awardable) first appeared, the Fifth Circuit rejected it. 'We reject the First Circuit's reasoning in Smith....' Espino v. Besteiro, 708 F.2d 1002 (5th Cir. 1983), at 1009. The conduct of both parties through all relevant years of this litigation has been with the understanding that in the Fifth Circuit, the prevailing parent recovered attorney's fees. The Supreme Court decision in Smith v. Robinson was announced the very day that the Supreme Court announced its decision in Tatro. The issue of attorneys' fees had not been briefed for the Supreme Court in Tatro, nor were any questions raised about it on oral argument before the Court. The change in policy came as a complete surprise to the Tatros and to their attorneys, whom the District Court had noted had taken the case on a contingency with the expectation of a fee award.

"The Supreme Court stated in Smith that they did not find Congressional intent clear and based its decision on a series of assumptions which Congress rejected when it enacted the HCPA. Congress did not change their policy -- the legislature did not fluctuate -- rather they re-stated in the HCPA what had been the consistent legislative intent all along. This kind of curative statute has been favorably received by the Supreme Court according to Hochman.

> 'The Court's favorable treatment of curative statutes is probably explained by the strong public interest in the smooth functioning of government. It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called small repairs.'

Hochman, supra, at 705.

> 'The Court has almost always upheld curative legislation designed to restore what was believed to have been the status quo.'

"Slawson, supra, at 226.

"Since the policy of Congress never changed, it would be very unsettling to leave a hiatus of twenty-five months (July 1984 to August 1986). Cases begun before Smith in expectation of attorney fee awards but concluded during the hiatus would receive no fee while cases begun during the hiatus with no expectation but concluded after the HCPA would get an award. The Fifth Circuit noted the need to address the hiatus in Fontenot, supra, by stating:

> 'Moreover, to abrogate fully any residual effects of Smith, Congress made the amendment to the EHA effective retroactive to the date of the Smith decision.'

"Fontenot, supra, at 1225. Thus retroactivity has a settling effect 'by remedying an unexpected judicial decision' (Hochman, supra, at 693) and clearing up the residue.

"A second issue courts look to in judging retroactivity is whether the parties' have changed their position in reliance on the changed law. Hochman, supra at 696. That is inapplicable here. The substantive issue in the litigation -- the provision of the school health service of CIC -- was affirmed in Tatro and continues. All that happened with the surprise application of Smith to Tatro was that Defendant IISD did not pay the prevailing parents' attorneys' fees. Slawson analyzes the same principle by asking whether the party put in a less advantageous position by the retroactivity is deprived of something that party bargained for. Slawson, supra, at

226. Clearly Defendant IISD proceeded in this case with the expectation that they were right and would not have to pay attorneys' fees to the parents if the parents did not prevail. Surely they did not begin this litigation with the expectation that they could lose and still escape paying attorneys' fees to the prevailing parents. Retroactivity does not deprive them of anything they bargained for. In fact, retroactivity gives them exactly what they 'bargained for' -- to risk having to pay attorneys' fees if they lose and the parent prevails.

"The final issue of concern over the effect of retroactivity is a general issue of equity. In this case equity favors the retroactivity. It was the wrongful action of the school district in withholding a needed school health service that caused the parents to have to incur the expenses of an attorney. The action of the Defendant IISD was confirmed to be wrongful by the 9-0 decision of the Supreme Court. It is only fair that the parents who were proven right should be reimbursed for their attorneys' fees by the school district that was proven to be wrong, and whose wrongful act caused the parents to incur the attorneys' fees."

The District Court decided on August 6, 1987: "Retroactivity did not pose any problems, constitutional or otherwise, for the Fifth Circuit; nor does it for this court" and awarded attorneys fees against local and state defendants. The local defendant has petitioned for rehearing, again claiming unconstitutionality. Now the state defendant, the State of Texas, has joined, asserting flatly that the HCPA, applied to Tatro, is unconstitutional.

I wish I could end my testimony on a more conclusive note than to say that the constitutionality of the retroactivity of the HCPA may be in the courts for some time.

Let me conclude by thanking this subcommittee for the protection it has afforded to children needed special education. I began litigating prior to the EAHCA and that Act has made a monumental difference in the lives of children with handicaps. The EAHCA has been under attack from the other two branches and this subcommittee's vigilance and advocacy has preserved and even expanded the features of the Act. The fight over the HCPA is only the latest in a long line of battles but we know with this subcommittee's continued support we will win the overall struggle for, as Senator Stafford characterized them twelve years ago, "all those extraordinary children who want only to lead ordinary lives."

Mr. **Silverstein**. Mr. Clark, do you have any comments with respect to the implementation of the Handicapped Children's Protection Act?

Mr. **Clark**. As I mentioned before, we are cooperating, but there is not a clear picture of the effect, and we only have scattered observations. One State reported to me last week, in comments to be presented if requested, that they had seen a doubling in the number of due process cases.

Mr. New, in a conversation last night on the topic, related an observation on the part of his school districts that might be worthwhile.

Mr. **New**. The comment that we have received from school districts is on the issue of whether or not to get involved in the litigation. In some instances, school districts would even consider doing things that they may not feel would be in the best interest, because it would be in the best financial interest.

I think the major activity that we are concerned about is working with the GAO and the study so that we do have facts to present. You can always have individual anecdotes, and we would not encourage anybody to build any policy based on that. I think the most significant comment will be the results that come from the study.

Mr. **Silverstein**. Thank you.

On page 3 of your testimony, Mr. Clark, you observe that in the past few months, "a new spirit of partnership between the States and the Department has emerged." What has changed? What has happened to create this new atmosphere?

Mr. **Clark**. I think a forthright presentation of concerns by States. We have a practice of representation from OSEP at each one of the NASDSE board meetings. That is a good opportunity for the administrative agency to get a sense quickly and informally of how things are working.

The concerns about timeliness and several areas as mentioned have been communicated, and I believe, given the response of the last several weeks, that there have been genuine attempts to try to get on top of these particular issues.

Mr. **Silverstein**. In your testimony, you also stated that:

> Notwithstanding a rocky start by the Department regarding implementation of the early intervention and preschool programs, States actually have come up with estimates of over 30,000, and all States are actually participating in the early intervention programs.

What does the Department need to do to keep these new initiatives on-track, and how important are getting out regs in a timely fashion in that regard?

Mr. **Clark**. Smoothness and stability will be very important, particularly for the Part H Program. In other words, things need to go as promised, the money needs to show up on time, in order for the program to be stable in the long run. It is very positive that States have shared in the risk that Congress took in what has been less than a positive fiscal time, to commit new moneys, to provide new services. And I think the 30,000 estimated count for the three to five group is a very positive, immediate feedback of the importance of what is going to happen.

State legislatures will be watching——

Mr. **Silverstein**. If I could interrupt for a second—I think in reaction to that, Senator Harkin felt that the Senate owed the States to meet their side of the bargain and thereby introduced and had accepted an amendment to include $16 million more than this subcommittee staff had recommended so that the preschool program could be fully funded. I think the Senate tried to meet its side of the bargain in doing that.

Mr. **Clark**. And that has been said several ways in the previous testimony.

The one thing I would like to emphasize is that the actual cost of the programs that many States are moving into for the first time are quite high. That means that if all States agree to participate, they then are committing themselves to very large expenditures in the future.

So that partnership, financially, will be very apparent as time goes on.

Mr. **Silverstein**. Thank you.

Mrs. Draper, in the State of Washington where you are a member of the Interagency Coordinating Council and a parent, what can you tell us about the differences the new early intervention program is making for families and with respect to interagency coordination?

Mrs. **Draper**. In Washington State, parents have been involved in a process that started before this law was formed. A federal grant was funded to NCCIP; Washington State was a part of that, and also has had a State Planning Grant. Through these efforts, parents have been involved in that whole process of planning and now policy-forming and policy development, and then ultimately, in carrying out the programs. Plans are to have a parent on the staff that will be implementing these programs.

Interagency coordination and collaboration is a real exciting thing to parents. For one reason, parents want a general consensus that their children are not fragmented pieces who go to certain departments for certain things, and other departments for other things. First he or she is a child who happens to have a disability. We are all going to work together to encourage and help that child develop to his fullest potential. And all agencies are sharing in the responsibility, along with the parent as the main driver in that force if he or she wishes to be.

This law, by virtue of the way it is drawn up, will help enable children and services to be kept in the community, which is the basis of being able to help the kids to be socialized and a part of society. In the long run, this is a less expensive way of doing things.

Have I answered your question?

Mr. **Silverstein**. Yes, you have. Thank you.

Mrs. Elder, what impact has the new early intervention program already had for handicapped infants and toddlers and their families in Texas; and what would be the impact on these changes if funding were to be decreased, increased, or remain the same?

Mrs. **Elder**. The hard part of answering that question is to try to give you in a short amount of time a few of the things that we are so excited about that have accompanied the passage of this legislation.

We began planning for implementing this legislation before the ink was even dry on the law. Last Monday, our Interagency Council awarded $3.4 million of additional funds; $3 million of those funds were provided by the passage of this legislation. But we cannot count just the over 1,000 new babies who are going to be added in the State of Texas and are going to receive services as a result of this law; that is not the only measure. We are going to be able to work on personnel standards. We have done surveys in the last year that indicate to us that most professionals who graduate and are accredited have not had training in working with young children or in working with families.

This law will enable us to provide the vital technical assistance and training to work with professionals who are already in the field and to work with universities to help them revise their curricula so that they can respond and train professionals, so that they can adequately serve this population.

Maybe one of the most exciting things is that this is not a segmented piece of legislation. It is not an education bill; it is not a health bill; it is not a social service bill. It is a family bill. And that is exactly as it should be. And for our State and the other States, the biggest impact is going to be it is going to give the power for managing the services of their children back to the family where it belongs, but provide resources for them to do it in the way that they want to see it done.

If we are not allowed to continue at the level that the bill has been authorized, we will see decreases in the amount of children that can be served; we will not have the resources to provide the training that is appropriate for the professionals, and we will not be able to continue the family focus that this bill has so appropriately established.

Mr. **Silverstein**. Thank you.

Mrs. Berman, are you finding that States are planning and using funds under part H to replace current funding sources, or are you finding that this is supplementing current funding sources?

Mrs. **Berman**. It is not replacing current funding sources. I think it is a little early to tell. But from what I have seen of plans that States have presented, they are totally in compliance with what the law asks that they should do, and I think they have been innovative in looking for ways that they can assess what services there are in their States and try to plan for a more coordinated approach to the delivery of services.

Mr. **Silverstein**. Mr. Martin, your oral testimony set forth several assumptions regarding congressional intent. Each of your interpretations of Congress' intent is correct. It is good to know that these points are generally understood out there. But it is somewhat surprising to learn that in some school districts and courts, some of the basic points have not been understood.

For example, Congress' intent is that parents who prevailed at the administrative level would receive fees regardless of whether or not they had to go to court on the substantive issue. That was in fact the major objection on the House side by some members of the Minority, and it was resolved, and the conference agreement was signed.

It is surprising to hear that that is not understood out there.

Mr. MARTIN. Well, in those districts that are resisting payment for parents who prevail at a hearing, we are typically hearing two kinds of arguments. First, they are saying that the Handicapped Children's Protection Act says that the parent be awarded fees, quote, "in any proceeding under this subsection", close quotes, and they argue that Congress was not referring to due process hearings, but they were referring only to proceedings in court. And second, similarly, they say that since the Act says only a court may award the fees, that obviously only time in court counts, and you do not get reimbursement for time at the administrative level.

Now, most courts that have heard that argument have rejected that, but we continue to get that at the administrative level.

Mr. SILVERSTEIN. It is no doubt that Congress was referring to the due process hearings. From the legislative history, as I said before, if there is one thing that is clear, it is that point, and I think the point has been made in—I do not know—10, 12 different places throughout.

Another question. Are there still some parents who are unaware of the right to attorneys' fees if they prevail in cases?

Mr. MARTIN. Yes. We find that constantly. As a matter of fact, during a break in the hearing, someone came up to me and asked me about that and told me about a parent in their State who had won at a hearing level, but had not pursued attorneys' fees because they did not think they had a right to that.

We have felt that, since under the Education of the Handicapped Act, there is a duty on schools to notify parents of their procedural rights in general, and of the availability of free and low cost legal assistance and so forth, that this should include a right to notice that there is an opportunity for reimbursement for attorneys' fees if the parent prevails. But we really have not seen any districts doing this at this time.

Mr. SILVERSTEIN. Do you ~~think that~~ it would in fact be consistent with Congressional intent?

Mr. MARTIN. I think it would be very consistent with Congressional intent—and I am not asking or suggesting that it be done in an inflammatory sort of way that encourages parents to get an attorney or to go to court; but Congress has required notice that says you do have this process available to question our judgment, you can go into a hearing, you can go further into court, and virtually every State and local agency I know of provides free and low cost legal assistance, phone numbers or addresses or names. Certainly consistent with that would be to clarify that a new Act has been passed and that parents can receive attorneys' fees.

Mr. SILVERSTEIN. You also indicated that there has been difficulty in some cases of making hearing records publicly available. Would you comment on that?

Mr. MARTIN. Yes. This has been disappointing to me because the thing that would prevent litigation in a State, or would prevent a parent from misunderstanding their right or prevent a school from misunderstanding their duty might be a decision in a very similar case by a hearing officer, with an explanation that was very compelling.

So the availability of hearing officer decisions seems to me to be something that would inform both potential parties and perhaps lessen litigation and hasten settlement.

But we find all across the country difficulty getting hearing officer opinions, and particularly in my State, we have had a lot of difficulty. A couple of years ago, we threatened to sue if in fact the hearing officer decisions were not made available to the State advisory panel, which is required in the regulations, and those were not being given to the State advisory panel. So we still get a lot of those complaints, and we think that more needs to be done to communicate those hearing officer decisions.

Mr. SILVERSTEIN. It is hard for me to understand how that could be a problem or there could be any resistance. Point 9 in the conference agreement dealt with this issue. In the House bill, I believe it was a requirement to make these public, but what happened is the House did recede because the Conferees wished to emphasize that public access to hearing decisions is existing law. So it is hard to understand that kind of resistance.

You also indicated in your testimony that at least one court has ruled a publicly-funded attorney cannot recover fees. What was the court's rationale?

Mr. MARTIN. The rationale was that the Act says "the court in its discretion may award" and one court that I know of and one magistrate that I learned about last night said if we are able to exercise discretion, we are going to exercise it, and we do not feel a publicly funded attorney should receive reimbursement for attorney fee awards because the parent actually has not paid attorney's fees; the attorney has been salaried and is not out any fees, and therefore we do not think it makes sense to award fees.

Mr. SILVERSTEIN. Isn't this one of the issues that held up this legislation in terms of the question of whether publicly funded attorneys would be reimbursed at the prevailing market rate?

Mr. MARTIN. Yes. We followed that, I think, for quite a few months, the deliberations on that.

Mr. SILVERSTEIN. Congress specifically debated this question and determined that attorney fee awards reflect current rate in the community without regard to whether the attorney was publicly funded and did not actually charge a fee. It did this as a matter of public policy, both to assure that parents represented by public attorneys are treated by school districts as seriously as those represented by private attorneys, and to provide adequate resources for needed representation, particularly in terms of the under-represented, low-income, poor, minority parents.

It is interesting that this issue is still cropping up.

Mr. MARTIN. Yes, I think your last point is very important because even though we are publicly supported, we have the same problem with resources of every one else who has testified here today—if we can be reimbursed where we prevail—we never ask to be reimbursed if we do not prevail—but if we can be reimbursed where we prevail, we can then use those resources to reach out to another worthy litigant who invariably does not have the resources to go to a private attorney.

Mr. SILVERSTEIN. And if I am not also mistaken, part of the debate and discussion in the Conference Report and elsewhere says that the general case law that is applicable otherwise for attorneys' fees case applies to this case.

Mr. **Martin**. Yes. We feel that the Supreme Court case of *Bloom* v. *Stenson* would certainly be applicable, but we are worried about this argument being made and district courts trying to exercise that discretion that they think they have.

Mr. **Silverstein**. Thank you.

[Additional material supplied for the record follows:]

NATIONAL COUNCIL ON INDEPENDENT LIVING
TESTIMONY PRESENTED BEFORE
UNITED STATES SENATE
LABOR AND HUMAN RESOURCES COMMITTEE
SUBCOMMITTEE ON THE HANDICAPPED
OCTOBER 8, 1987

Mr. Chairman, it is both a pleasure and privilege to have this opportunity to speak with you and members of the Committee on behalf of the National Council on Independent Living and the right of all Americans to self-determination and productive independence.

Our objective in addressing the Committee today is twofold. First of all, we would like very much to convey the strong sense of our Membership that positive steps have been taken by the Congress and the Administration during the recent past which support the aspirations and interests common to all people with disabilities. In this regard I refer both to enactment of the Rehabilitation Act Amendments of 1986 and to the appointment of Justin W. Dart Jr. as Commissioner of the Rehabilitation Services Administration (RSA). Secondly, we would direct your attention to an apparent dichotomy between, on one hand, the just and empowering nature of these actions and their stated intent and, on the other hand, the manner in which key aspects of the value of these actions have subsequently been interpreted and treated. In you deliberations we not only urge consideration of the particulars of our testimony which are raised in the context of these actions, but of the overriding issue of our right to substantive participation and control over those processes which determine our destiny and quality of life. This, we are convinced, is the central issue and that which is failing to survive the process of translating commendable actions and intentions of Congress and the Administration into reality for people with disabilities.

The Rehabilitation Act Amendments contained landmark language growing out of the independent living movement. For the first time ever in the history and evolution of federal efforts to provide rehabilitation services and support for the independent living goals of Americans with disabilities, there was a tangible commitment to place control or at least one aspect of such efforts in the hands of those people whose interests are primarily at risk. By this I, of course, refer to the governance of Title VII Part B Centers for Independent Living. For people with disabilities, this commitment to consumer control, by both the Senate and House, represents a step away from dependency producing paternalistic policy and a step toward a nationwide system of services which are genuinely accountable to our interests. I'm sure you are aware, as evidenced by the Subcommittees letter to Commissioner Dart of June 2, 1987, the process of implementing this policy change and, therefore, consumer control of Centers, has been threatened on the basis of interpretation by the Department of Education. While it is beyond the scope of this testimony to fully articulate the background and detail which has contributed to the manufactured cloud and confusion which currently hangs over and surrounds prospects for implementation of consumer control, we come to you again seeking recognition of this most basic of issues.

In addition to the matter of consumer control and self determination just stated, we also seek to bring your attention to the concerns being expressed throughout the country in connection with implementation of provisions of the Act regarding the Part A program and formation of State Independent Living Councils.

With respect to the Part A program we wish to share with you our perception that the intent underlying funding of Part A was to strengthen and expand the availability of independent living services in cooperation with centers. This interpretation on our part is underscored by, for example, the report of the House committee on Education and Labor dated February 6, 1984 in which it is stated regarding the authorization of appropriations for independent living services:

> "The conferees wish to strongly endorse the full implementation of the independent living concept through funding for Part A of Title VII, which authorizes a statewide comprehensive service delivery system....Cooperatively with the centers funded through Part B of this Title, services made available through Part A would enhance, expand and stabilize the Independent Living Program. Although only five years old, Independent Living Centers have demonstrated that there are cost effective alternatives to institutional care."

With respect to the Part A program let me share with you that while positive examples may be cited with regard to implementation efforts in some states, there is a prevailing concern that rather than functioning largely to strengthen and expand, implementation efforts have been characterized by the development of bureaucratic mazes which confound rather than compliment the efforts of Centers as well as an overall lack of direction which is consistent with the intent as stated. Moreover, we are concerned that despite very recent efforts to gather data which could be used to evaluate the effectiveness nationwide of the Part A program, the program remains adrift and in need of policy direction and systematic evaluation.

As regards the matter of the State Independent Living Council provisions, we would briefly like to state that while the concept is worthy of our support, our experience dictates caution and recommendations of a practical nature which, if adopted, would support maintenance of the integrity of the concept. Toward this end we would urge that the process of implementation and composition of the Council be based on input from consumers of independent living services as the basis for appointments made by the director of the state agency to the Council. Secondly, it is strongly recommended that a majority of the Council be composed of consumers in addition to the required and meaningful involvement of parents and guardians. Finally, it is seen as no less than critical to the intended success that the role of the Council be defined in substantive terms. Toward this end we would suggest that the Council be vested with authority to "sign off" on the five year plan and/or any amendments thereto.

Through adoption of such measures of accountability, the trend toward form rather than substance may be stopped. Consumer control, as represented in the context of this particular issue, will not occur as a result of the benevolence of state agencies to the demand for self determination of people with disabilities and the desires of Congress. It will only occur if the road we must travel is paved with something more concrete than good intentions.

As a final comment regarding matters pertaining to consumer control and the Act itself, I should like to point out that in the coming months we will see unfold a process for the development by the Rehabilitation Services Administration of indicators to be used to evaluate Centers for Independent Living. While we wish to express confidence at this point in the process that is being convened for this purpose, we would also like to share our concern that this is yet another crucial area where ultimately the value we place on consumer control and productive independence must be reflected. Anticipating that there may be some question or wonderment as to why we would choose to comment on this particular issue at this particular time, let me simply explain. The National Council on Independent Living, in full cooperation with RSA contractors, have developed a broad based mechanism for the purpose of developing evaluative indicators for Independent Living Centers. Our past experience with such matters forces us to, even at this early stage, be concerned. This concern, quite simply, stems from the fact that, even if full and efficient agreement is reached between the field, the contractors and others there will still remain multiple levels of bureaucratic consideration to which any product, good, bad or indifferent will be subject. These levels of consideration and revision transcend in importance the need for consumer involvement in the process of development or any consensus of the field. I suggest that you too would anticipate with some anxiety decisions by nameless parties regarding disposition of your aspirations.

Finally, let me say that it is a pleasure to share with you the wide and deeply felt support by people with disabilities for Commissioner Dart. While it is our understanding that differences have occurred and been expressed with respect to the proper role and authority of the Commissioner, it is not our intention to emphasize differences. Rather, we wish to emphasize that the appointment of Commissioner Dart has represented for people with disabilities the possibility that qualified persons with disabilities are not discriminated against by this government and that the Administration and Congress indeed acts on the basis of professed beliefs in the rights and productive potential of all Americans. If the possibility and promise represented by the appointment of Commissioner Dart is to be translated into policy and practice based on the right of people with disabilities to control their own lives and play a substantive and equal role in the decision making processes of government, it is necessary that, along with responsibilities, there is given the authority to form and carry out the responsibility of the Commissioner and the Rehabilitation Services Administration to serve people with disabilities. As an organization of people with disabilities representing every state and region of the Country we feel singularly qualified to say to you that the perspectives and direction of the Commissioner do, in fact, serve to further the interests of people with disabilities and to bring us closer to our dream of a just and barrier free society in which all Americans may lead productive lives. Once again, let me express appreciation for the opportunity to share with you our convictions and concerns. I am, at this time available for any questions you may have.

STATEMENT

RESPECTFULLY SUBMITTED

TO THE

SUBCOMMITTEE ON THE HANDICAPPED

ON THE LABOR AND HUMAN RESOURCES COMMITTEE

ON THE OVERSIGHT HEARING ON

THE REHABILITATION ACT OF 1986 P.L. 99.506

THE EDUCATION OF ALL HANDICAPPED CHILDRENS ACT P.L. 99.457

THE HANDICAPPED CHILDRENS PROTECTION ACT P.L. 99.372

On Behalf of

United Cerebral Palsy
Governmental Activities Office
1522 "K" Street, N.W.
Washington, D.C. 20005
202-842-1266

My name is Danny Ruskin and I have had cerebral palsy from birth. I'm now 24 years of age. I attend an adult training program in Oak Park. I've been in the training program for three years now. I'd like to move on and find myself a job so that I can take on my own responsibility. I'm now living in a nursing home and the care is just terrible so is the food. A person normal or handicap shouldn't have to live under the conditions that we are exposed to each day. I, myself, do just about everything by mouth such as typing, drawing, playing games, etc.. Even though I'm handicapped, I would still like to live on my own like a normal person with some assistance such as a personal care attendant (PCA). I think it would really help me to make my own money. I would like to encourage other handicapped people by saying that we don't have to let our handicap handicap us or get the best of us.

This testimony is written on behalf of individuals like Danny Ruskin and his family who over the last thirty-two years have turned to United Cerebral Palsy Association for early intervention services, employment placement and community living support.

UCPA is a national network of community based providers of services to persons with severe disabilities and has about 180 affiliates in 45 states across the country. Collectively, UCP spends about $250 million dollars a year to provide needed services to persons with severe disabilities and their families. Over the years United Cerebral Palsy Associations has become increasingly concerned with the inequities of the early intervention system in the United States and the lack of employment opportunities for individuals with severe and multiple disabilities. During this time we have also become increasingly committed to the concept of rehabilitation technology and the benefits it can afford individuals with severe disabilities.

At the end of the 99th Congress our affiliates, families and consumers were filled with new hope that The Rehabilitation Act Amendments of 1986 PL 99.506 and The Handicapped Act Amendments of 1986 PL 99.457 would open new educational and employment opportunities for individuals with cerebral palsy and similar disabilities. United Cerebral Palsy Association and the individuals we represent are very appreciative to this Committee and Congress for recognizing the needs of individuals with the most severe disabilities. We look to your leadership for continued support and oversight in insuring that the amendments passed by Congress in the areas of early intervention, preschool programs, supported employment and rehabilitation technology services become a reality for those individuals who could benefit from them, those with significant multiple disabilities.

Early Intervention

Last July United Cerebral Palsy Associations testified in front of the House Committee on Education and Labor Select Education Subcommittee on the vital importance of early intervention services for infants with cerebral palsy and their families. Our testimony pointed out that early intervention not only improves the functioning level of a child and teaches the family needed skills but also saves money.

Since the passage of Title H of PL 99.457 UCPA has been working with our affiliates to educate them on Title H. We have also encouraged them to become active in the planning and development of early intervention services by serving on their state councils and lobbying their state legislators for strong early intervention legislation. We are very pleased that all fifty states and the District of Columbia are committed to participate in this program. The implementation of this program over the next three years will be vital, as states develop their interagency agreements, identify who is qualified to provide early intervention services and develop a framework for the individualized family service plan and a due process system. We look to this Committee, Congress and the Department of Education for leadership in providing States with technical assistance and guidance. We are very concerned that the Office of Special Education has not yet promulgated regulations for this complex program and we are hopeful that they will be released soon. It is very important that this Committee be committed to working to ensure that Title H is funded at its full appropriation level.

Preschool Services

United Cerebral Palsy Association is equally concerned that all children with disabilities ages 3-5 receive preschool services. We are also very excited that all fifty states including the District of Columbia have also chosen to participate in the program for this fiscal year. Research has documented the importance of preschool for children with cerebral palsy, but unfortunately before this legislation was signed into law not all children in need of preschool services had access to them. In the past our Association received many inquiries from families asking how they could get their children with multiple disabilities into such programs. Now all of our families will be able to participate in early intervention services. We are very concerned that regulations have not been issued for this new program. As we have stated earlier, we are concerned that without the promulgation of regulations that the special needs of this age group will not be met. We are most concerned that preschool programs take place in a variety of settings and take into consideration the special needs of families with young disabled children. We are again looking to the members of this Committee to ensure that this program receives full funding.

Rehabilitation Act Amendments of 1986 PL 99.504

UCPA believes many significant amendments were made to the 1986 Rehabilitation Act which will improve services for severely disabled individuals such as:

1) the addition of impartial hearing officers to strengthen the review process;
2) the broadening of the Client Assistant Program; and
3) the change to a functional definition of severely disabled individuals.

But, we are most encouraged that this legislation recognizes the importance of rehabilitation technology services and supported employment. We believe the inclusion of rehabilitation technology services and supported employment in P.L. 99.506 is a declaration of future independence for thousands of individuals with severe disabilities. The combination of these new amendments in the Act means severely disabled individuals who face multiple barriers to employment will now be able to overcome these barriers and maximize their human potential.

Rehabilitation Engineering

"Rehabilitation engineering applies to the principles of creative problem solving and engineering in combination with the use of technologies to enable individuals with disabilities to function more independently on the job, in training programs, or in the home. This is accomplished through the development of assistive aids, adaptive devices, and restructuring of work and/or learning environments and routines. Through such one of a kind problem-solving interventions, individuals with disabilities strengthen their abilities to function more independently and are often better able to participate in work and/or training programs; therefore becoming more independent."

Rehabilitation technology is a cost-effective service. To illustrate this, I would like to discuss a specific case from the state of Indiana:

Twenty-two year old Lisa, who has paraplegic cerebral palsy and was supported by Supplemental Security Income benefits, was referred to the UCP Indiana Rehabilitation Technology Team to assist her in finding employment, which they did, as an Administrative Clerk. But in order for her to perform all of the functions of her job, five modifications had to be made by the Rehabilitation Technology Team:

1) her wheelchair seat was raised, so she could reach the copier buttons;
2) a new footrest was installed on her wheelchair so she could get closer to the copier;
3) a sheet of dycem was attached to her workspace to help Lisa open plastic report covers;
4) a reacher was secured to her wheelchair to assist her in retrieving dropped items; and
5) a refrigerator basket was attached to her wheelchair so Lisa could carry papers.

Lisa recently completed her on-the-job training and received a raise. The cost of Lisa's success was $1,422.00 for the Rehabilitation Technology Team's interview, assessment, supplies, equipment and modifications. Her yearly salary is $9,880.00 of which she pays $2,753.40 in taxes. The decrease in her SSI payments resulted in a savings to the federal government of $3,900.00 per year. At this rate, it took Lisa just a little over 11 weeks to pay back the cost of her rehabilitation.

It is clear that rehabilitation technology is a powerful service option that can redesign the workplace and the home to assist severely disabled individuals live more independently. Since rehabilitation technology services are not readily available to persons with severe disabilities in most states, we believe it is critical that RSA and Congress take a strong national leadership in this area. We believe this can be done if The Office of Education:

1) establishes a regionally based or national system of technical assistance to states and service providers;
2) places an emphasis on training personnel in the area of rehabilitation technology; and
3) encourages demonstration programs funded by RSA to incorporate rehabilitation technology in their service delivery models.

We also have strongly urged the Rehabilitation Services Administration to develop regulations which ensure that:

1) the evaluation and delivery of rehabilitation technology services is performed by qualified personnel;
2) the evaluation process covers all areas of activities of daily living, not just employment, as stated in PL 99.506;
3) state and district vocational rehabilitation offices are given the option of contracting with nonprofit organizations for evaluation and provision of rehabilitation technology services;
4) rehabilitation technology services are provided during all phases of the rehabilitation process from a determination of eligibility to post-employment services; and
5) there is a system for dissemination of findings and models for the delivery of rehabilitation technology services which are developed by state VR agencies and community-based organizations.

We are hopeful that the Taskforce on Rehabilitation Technology and Engineering established by the Department of Education, Office of Special Education and Rehabilitation Services will provide a framework for RSA and OSERS as they put an increased emphasis on rehabilitation technology.

Supported Employment

UCPA believes that through supported employment programs, many severely disabled individuals for the first time will be able to obtain competitive employment in integrated work settings. Until now, many programs which worked with individuals with cerebral palsy only assisted the individual to "get ready" for a job instead of giving the individual the job training and long-term support they need. During the past few years, an array of supported employment demonstration programs funded through OSERS, have proven that severely disabled individuals can work in a variety of integrated settings with appropriate support services.

UCPA is also very excited by the prospect of using rehabilitation technology in combination with the principles of supported employment. We believe that this combination is the key to employment and increased independence for many individuals with cerebral palsy. The New Jersey UCP state affiliate has proven this is a winning combination in their Project Hire supported employment program funded by an OSERS' demonstration grant. The rehabilitation technologist works together with employment specialists in making appropriate job site modifications. Kevin, who is a graduate of their program, is an excellent example of how powerful this combination truly is.

Kevin, who has cerebral palsy, spent 20 of his 22 years in a New Jersey state institution for the mentally retarded. For years he spent his days in a prevocational day program. When he was moved into a community living arrangement, he was also referred to Project Hire, where they immediately found employment for him at a local fast food restaurant as a maintenance worker. An employment specialist worked with him for three and a half months in assisting him to learn the job. Due to his motor impairment, Kevin had difficulty using a broom, so the rehabilitation technologist modified the broom he used by cutting it down and adding a t-handle to give Kevin more control over it. Kevin recently celebrated his one year anniversary as an employee of the restaurant where he is earning $5.35 per hour and receives full benefits, including stock options.

We believe this example demonstrates why United Cerebral Palsy is so strongly committed to the combination of rehabilitation technology and supported employment. We believe it will provide new employment opportunities for many severely disabled individuals. But in order for these opportunities to become a reality the State Vocational Rehabilitation System must work with their Developmental Disabilities System to meet the long term support needs. These two State funded resources must also work together to educate their staffs, employers and community based organizations that now is the time for individuals with severe and multiple disabilities to become employed.

The inclusion of rehabilitation technology and supported employment in the Rehabilitation Act Amendments of 1987 will provide many new opportunities for individuals with severe disabilities in the areas of employment and independent living. UCPA looks to your continued leadership in this area.

When Congress passed these amendments last year they responded to long term unmet needs of infants, children and adults with significant disabilities. It is clear that the education and rehabilitation system will face significant changes in order for these amendments to be implemented on a local level. United Cerebral Palsy looks to the Senate Subcommittee on the Handicapped to aggressively use its oversight authority to ensures that these system changes occur and that these changes meet the needs of individuals with severe and multiple disabilities. This Committee must carefully monitor the development of service delivery systems in early intervention, supported employment and rehabilitation technology. The benefits derived from these amendments must be measured in terms of consumer and family outcomes that result in increased independence, integration and productivity. United Cerebral Palsy Association urges you to continue to maintain this important perspective.

National Rehabilitation Association

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OCTOBER 8, 1987

TESTIMONY OF
THE NATIONAL REHABILITATION ASSOCIATION
BEFORE
THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

Mr. Chairman, Members of the Subcommittee, the National Rehabilitation Association is an organization whose purpose is solely to advance rehabilitation for persons with disabilities.

The nearly 17,000 members of the National Rehabilitation Association and its seven divisions -- the Job Placement Division, the National Association Rehabilitation Instructors, the National Association of Rehabilitation Secretaries, the National Rehabilitation Administration Association, the National Association for Independent Living, the National Rehabilitation Counseling Association, and the Vocational Evaluation and Work Adjustment Association -- express our appreciation for giving us the opportunity to present our views.

THE REHABILITATION ACT OF 1973, AS AMENDED

The Rehabilitation Act of 1973, as amended, is one of the most complete and well-balanced pieces of legislation in the human services field. This program of Rehabilitation Services is a cornerstone in the Nation's effort, at the State, Federal, and private sector levels, to assist Americans with disabilities in their efforts to achieve meaningful employment and self-sufficiency.

People with mental and physical disabilities comprise a significant portion of the Nation's population - an estimated 36 million individuals. According to the National Center for Health Statistics, approximately 22 million individuals are disabled in such a way as to chronically limit their ability to function.

The size of the disabled population is not static, but continues to grow -- through accidents, injuries, illnesses, and birth defects -- at an estimated rate of 500,000 annually.

The Rehabilitation Program signifies the Nation's recognition of its responsibility to provide disabled citizens with the opportunity to be a part of the mainstream of life as full participants.

Our Nation's past investments in this program have returned significant dividends to our Nation's taxpayers, and more importantly, to the persons with disabilities who receive rehabilitation services. Few, if any, programs funded by the Federal government consistently return so many benefits, both financial and personal, to all segments of our society.

The National Rehabilitation Association must point out to the Chairman and Members of the Subcommittee that there is currently a state of confusion that exists within the Federal delivery system of the nation's Rehabilitation Program, specifically the Office of Special Education and Rehabilitative Services (OSERS), and this is having an adverse effect on the entire disability community.

The Rehabilitation Act Amendments of 1986, enacted into law last Fall, place new requirements on the State-Federal Rehabilitation Program. For instance, for the first time, each State Agency is mandated to provide Rehabilitation Engineering Services, and must consider "supported employment" as an additional possible outcome of services. These are worthy goals. They, however, place additional demands on a service delivery system which is currently overburdened, and only, due to the lack of resources, able to provide services to 1 out of every 20 individuals eligible to receive such services.

In light of the fact that 66 percent of individuals with disabilities aged 16 and over report that their disability prevents them from working, and that individuals with disabilities comprise the most underemployed segment of our society, it is vital that State, Federal, and private partners cooperate to provide the assistance necessary for individuals with disabilities to move from income-maintenance and dependency to employment and tax-paying, self-sufficient independence.

SUPPORTED EMPLOYMENT

Established by the 1986 Amendments, but not funded until September 30, 1987, the purpose of this program is to assist State Rehabilitation Agencies in establishing collaborative efforts with other public and private organizations to provide opportunities for placement for persons with severe disabilities in "supported employment." Individuals to be served through this program are those with severe disabilities who have traditionally been unable to achieve competitive employment. Supported Employment grants are designed to enable all State Rehabilitation Agencies to provide training and time limited post-employment services leading to supported employment.

As you are aware Mr. Chairman, the Department of Education has failed to adequately implement this program since the 1986 Amendments were signed into law on October 21, 1986.

The Department of Education has:

- Opposed establishment of the Supported Employment Program in the 1986 Amendments;
- Requested that no funds be appropriated for the Supported Employment Program for Fiscal Year 1987;
- Proposed that the funds appropriated for the Supported Employment Program for Fiscal Year 1987 be rescinded;
- Requested that no funds be appropriated for the Supported Employment Program for Fiscal Year 1988;

- Delayed the allocation of Fiscal Year 1987 funds to the States until September 30, 1987 (the very last day of Fiscal Year 1987); and
- In a statement before the Senate Appropriations Subcommittee, the Secretary blamed these delays on the States being "unready" to implement the Supported Employment Program.

It is ironic that the Department of Education portrays the States as being the major impediment to the implementation of the Supported Employment Program, especially when one reviews the Department track record of delays, requests to rescind, and recommendations to zero-fund the Program.

STAFF SHORTAGES AT THE REHABILITATION SERVICES ADMINISTRATION

In 1981, the Rehabilitation Services Administration (RSA) had a staff of 137 individuals to oversee the allocation of $858 million. In November of 1986, RSA had a staff of 80. Over one of every three positions at RSA was lost. During that same period of time, appropriations for the Rehabilitation Program increased from $858 million to $1,281 million, an increase of nearly 50 percent.

The 1986 Amendments directed the Secretary to ensure that the staffing of the RSA "shall be in sufficient number to meet program needs and at levels which will attract and maintain the most qualified personnel." Since enactment of that provision, the following has occured:

- The downgrading of twenty-five positions in the RSA, making less attractive, and thus harder to fill, key professional positions;

- New professional staff have NOT been hired;
- Few, if any, new positions have been designated for the Basic State Grant Program; and
- Four Regional Commissioner positions remain vacant.

The severe lack of adequate, qualified staff at RSA has impeded its ability to complete Regulations to implement the 1986 Amendments.

STATUS OF THE REHABILITATION ACT REGULATIONS FOR THE 1986 AMENDMENTS

The status of many regulations necessary for the implementation of the 1986 Amendments remains unknown, including those for the Basic State Grant Program.

States are now carrying out important aspects of the 1986 Amendments without the benefit of even "proposed" regulations.

The Independent Living Services for Older Blind Individuals Program, first funded in 1985, has never had regulations.

These critical lapses are directly caused by the failure of the Department to maintain, and obtain, qualified professional staff. This is directly impacting on the quality of rehabilitation services to persons with disabilities.

CONCLUSION

Mr. Chairman, as we have previously stated, the Rehabilitation Act of 1973, as amended, is one of the most complete, well-written, and well-balanced pieces of legislation in the field of human services. In one Act, provisions are included for a comprehensive and individually-tailored program of rehabilitation services to eligible physically and mentally disabled persons; a training program to fully prepare rehabilitation personnel; a research program to develop new techniques in providing services; a special projects program to target services to specific populations; a comprehensive services program for independent living for persons too severely disabled to benefit from traditional vocational rehabilitation services; and other specially designed programs. The Rehabilitation Act and the programs it authorizes signifies our society's recognition of its responsibility to provide citizens with disabilities the opportunity to be full participants in the mainstream of life.

Congress has responded positively in passing Public Law 99-506 to the rights and needs of persons with disabilities is because of its recognition that investments in rehabilitation programs are in fact, investments in a stronger United States of America.

The lack of response by the Office of Special Education and Rehabilitative Services (OSERS) regarding Congressional mandates to staff the RSA with adequate, qualified, professional staff has strangled its ability to fulfill the responsibilities required under the Rehabilitation Act.

The time has come to recognize the problems within the Department and to take corrective action to put an end to this internal dissension. The effect of this infighting has divided the entire disability community and the losers are persons with disabilities and ultimately, our entire country. The contribution these citizens have to offer is significant and must not be lost.

The National Rehabilitation Association urges you, Mr. Chairman and Members of the Subcommittee, to firmly address the problems impeding the ability of the Department, OSERS, and RSA to implement the Rehabilitation Program.

Thank you.

The Commonwealth of Massachusetts
Executive Office of Human Services
Massachusetts Rehabilitation Commission

ELMER C. BARTELS
COMMISSIONER

Statler Office Building
20 Park Plaza
Boston, 02116

October 20, 1987

The Honorable Tom Harkin
Chairman, Senate Subcommittee on the Handicapped
U.S. Senate
Washinton, DC 20510

Dear Senate Harkin,

Through the courtesy of Senator Kennedy, I am submitting to you for inclusion in the record a Statement, on behalf of the Massachusetts Rehabilitation Commission and its 40,000 clients, concerning the current state of programs and services available to individuals with disabilities under the Rehabilitation Act of 1973, as amended. I regret that circumstances made it impossible for me to attend your hearing in person, and appreciate this opportunity to share my views on the programs and services that are critical to people in the disability community here in Massachusetts and across the United States.

Very truly yours,

Elmer C. Bartels
Commissioner of Rehabilitation

ECB/NFE:sg

Enc.

The Commonwealth of Massachusetts
Executive Office of Human Services
Massachusetts Rehabilitation Commission

ELMER C. BARTELS
COMMISSIONER

Statler Office Building
20 Park Plaza
Boston, 02116

STATEMENT OF ELMER C. BARTELS, COMMISSIONER OF REHABILITATION SUBMITTED TO SENATE SUB COMMITTEE ON THE HANDICAPPED SENATOR TOM HARKIN, CHAIRMAN

As Commissioner of the Massachusetts Rehabilitation Commission I am accountable to some 40,000 clients of our agency for providing them with effective vocational and independent living services so that they can live productive, independent lives in Massachusetts. Our ability to function successfully as a agency and deliver the services required by our clients, especially the 88% of severely disabled vocational rehabilitation clients who now actively participate in rehabilitation programs so they can work, is currently at risk because of events in Washington that threaten the sixty-seven year old state-federal rehabilitation partnership.

My statement is intended to address matters of serious concern to all of us who are concerned aboutnational disability policies and services. We need the help of this distinguished Committee to assure that the Rehabilitation Services Administration and its very capable Commissioner, Justin Dart, have the support and endorsement of Congress to lead and administer the sixty-seven year old state-federal vocational rehabilitation partnership which has offered the promise of independence to millions of citizens with disabilities. Despite a very strong record of providing vocational rehabilitation services to over 900,000 disabled Americans each year, state rehabilitation agencies are being attacked by federal officials and faceless bureaucrats. It is insulting, demeaning and counterproductive to undercut a constructive state-federal partnership this way. Even worse, the acrimony and power play tactics that accompany this rhetoric threaten to fragment the constituencies of this very program to the detriment of effective services to people with disabilities.

From the very beginning of the vocational rehabilitation program in 1920, the state-federal partnership in vocational rehabilitation has provided a base and an impetus towards broad disability policies that potentially encompass every individual with disabilities who needs encouragement, support services to work and live independently in their home communities. The history of the program in Massachusetts exemplifies one's state's creative approach to developing an array of services that accomplish these objectives. We have built upon the core services of the state-federal vocational rehabilitation program. Over time we have developed vocationally related programs to provide long term sheltered employment, rehabilitation for injured workers, adaptive housing, van modifications, supported employment for various disability groups, and a vocational rehabilitation program for General Relief recipients. An additional set of programs have been established using the concepts of independent living as defined in Title VII of the Rehabilitation Act. These include a statewide network of independent living centers, a personal care attendent program for severely physically disabled individuals who are employed, a rehabilitation program for persons with traumatic head injuries, and program of homemaker and chore services for adults with disabilities who are trying to live independently.

Responsiveness to human needs is a hallmark of the Rehabilitation Act which provides for flexible client-centered programs. Our agency makes particular efforts to work with its many constituencies to achieve this objective, since no other program in education, social service and/or job training relies to such an extent upon external factors and constituents. The most obvious constituency of the vocational rehabilitation agency is the client base: people with disabilities who have been or might be served by the agency. Constituency in a broader sense is those people in the community around the agency who understand the agency mission, have an interest in what it is doing, and who feel good about the performance of the agency in carrying out its stated mission. Through local and statewide consumer councils we reach out to the people we serve and work with to get their input and constructive criticism. It is important for the agency to be open to outside involvement and to be involved in general disability issues in the community. The agency is in the disability business. As such, it must be involved with all constitutencies to meet mutual needs.

Coordination is also critically important to the rehabilitation program to maximize services to our clients. We have established regular formal linkages and cooperative working relationships with related disability programs that are outside this agency's legal domain, including mechanisms for client referral to and services from: a personal care attendant program for persons with severe physcial disabilites who are Medicaid eligible; a housing program for people with disabilities; our State's Office for Handicapped Affairs which advocates for improved access by people with disabilites to all governmental programs including housing; transportation, education, and social services. Our agency has ties to the state Architectural Barriers Board which oversees and assures accessible buildings; as well as to two disability specific agencys, one serving person who are blind and one serving persons who are deaf or hard of hearing. We have interagency service agreements with the Department of Mental Health for coordinating services to persons with mental retardation, to persons with long term mental illness. For years we have had a successful working relationship with the State Department of Education to encourage linkages from special education program graduates to rehabilitation and work training services.

Outside of state government a network of private/public partnerships has developed in concert with our agency. Most important have been Massachusetts Project with Industry, the vocational rehabilitation vendors, the Bay State Skills Corporation, the statewide network of Private Industry Councils, and Chambers of Commerce, to name a few. Over and above these are the many, many private sector employers who hire agency clients and support the agency through good two way relationships of information exchange and learning.

Based upon the combined mandates of the vocational rehabilitation agency in Massachusetts and the other disability agencies and organizations in the state, there is available here a very comprehensive set of programmatic options.

Although I believe we are justifiably proud of the achievements of our vocational rehabilitation program in Massachusetts, our experience is not without precedent. My communication with rehabilitation colleagues in the other 49 states has educated me about the many creative and varied efforts of state rehabilitation agencies in experimenting innovating to deliver effective rehabilitation services for the citizens in their states. The state-federal vocational rehabilitation program was intended by Congress to support and encourage local innovation, to be responsive to varying service needs of the disabled populations and constituencies in all the states. The program demands a cooperative partnership of equals to ensure that American citizens with disabilities get the services they require to achieve independence. Adequate federal funding and leadership are crucial to that effort. So is mutual respect between the partners.

Unfortunately, some of the practices and policies of the Department of Education and the current administration have, in recent years undermined and undercut the partnership, to the detriment of the people we serve. Officials in the federal Department of Education have repeatedly and consistently mischaracterized the positions and prerformance of the state federal program and provide direct rehabilitation services to nearly a million individuals with disabilities.

I want to distinguish myth and reality here and set the record straight on several key points:

Myth: State vocational rehabilitation programs do not serve the severely handicapped.

Reality: In Massachusetts 88% of our active clients have severe handicaps, over 4000 agency clients with severe handicaps entered employment last year following successful completion of their vocational rehabilitation programs. Nationwide over 63% of the clients in state administed vocational rehabilitation programs are severely disabled. The higher cost of serving more severely disabled clients has not been fully compensated, due in part, to lack of support by Department of Education officials for full funding of vocational rehabilitation program authorizations.

Myth: State vocational rehabilitation programs have ignored severely handicapped young people who are graduating from special education programs and neglect the "transition to work" issues that are unique to this population.

Reality: State vocational rehabilitation agencies have been encouraged by the Rehabilitation Services Administration to develop interagency agreements with their educational agency counterparts. The states have complied with the requirements. All vocational rehabilitation agencies have actively developed such agreements. For example, in Massachusetts one of our senior agency managers is a special liason to the State Department of Education; this assignment assures mutual cooperation and effective rehabilitation services to young people with disabilities who need services to successfully make the transition from school to work. More adequate levels of RSA staffing and technical assistance, would support and encourage good working relationships between rehabilitation agencies and their counterpart special education programs. RSA staffing and funding cuts have been counterproductive in this area.

Myth: State vocational rehabilitation agencies oppose supported employment services to very severely handicapped persons.

Reality: Delayed regulations and release of appropriated funds for this exciting new program have prevented states from implementing services to some 67 people with severe disabilities nationally. In Massachusetts our RFP and contract process was complete last June. We could have started supported employment programs for some 67; they would have received two to four months of services by now.

Myth: Statutory changes and reorganization of the Rehabilitation Services Administration within the Office of Special Education and Rehabilitation Services are necessary to better coordinate and integrate programs that serve people with disabilities. State must reorganize special education and vocational rehabilitation services under a common supervisor to achieve this.

Reality: The success of the vocational rehabilitation program is attributable to its clearly defined employment-oriented mandate for all individuals whose disabilities significantly impeded employment. This, of course, includes young people graduating or leaving special education programs. But it also encompasses a greatly varied adult population: individuals who are injured at work or elsewhere; individuals who contract new severe chronic diseases or whose health conditions worsen with age.

Medical technology has improved so that many people who would have died in earlier times, now live and through rehabilitation technology and services may become productive workers once again. These people, too, are key constitutents of the state-federal vocational programs. Their success in rehabilitation programs has engendered confidence in state legislators who endorse the state-federal vocational rehabilitation partnership on behalf of disabled people in their districts.

A structual change so that state vocational rehabilitation agencies would be required to focus on a preferred group of people with disabilities at only one point in time (ie transition to work), would neglect state agency responsibilities to the broader disability community. It also raises questions about adequacy of resources to serve people who may need flexible access to use the vocational rehabilitation program subsequent to their employment to maintain or regain employment. Through a strengthened role for the Rehabilitation Services Commissioner, adequately supported by capable staff in Washington and the regions, the state agencies can best serve all of the people who are encompassed in their mandate under Title I. Reorganization is not the solution. Real federal commitment to the full vocational rehabilitation program is what is needed, not rhetoric.

Myth: Transition, supported employment and services to a narrow band of people with disabilities are the key current issues for state-federal rehabilitation programs. Work is the total focus of services under these programs.

Reality: Title VII Independent Living Services are an equally important part of the R.S.A. mandate for rehabilitation services under law. A strong and viable Part A independent living program is absolutely essential to help individuals with very severe disabilities achieve readiness to participate successfully in the work programs funded under TItle I. Attempts on the part of Administration officials to eliminate Part A funds from the budget and delays in promulgating the Part A reporting forms indicate a very limited understanding about and lack of commitment to workable methods for involving individuals with the most severe disabilities in vocational rehabilitation programs.

In conclusion, the ability of people with disabilities to work and achieve independence depends on the ability of the Rehabilitation Act and the State Vocational Rehabilitation Agency to be relevant and move with the times. The Rehabilitation Act promises us the opportunity to work and live independently. The State Vocational Rehabilitation Agency, as a State Agency, has the responsibility to not only adminster programs under the Act, but to be a force for change within the community of agencies and State government at large. A strong working partnership between the states and the Rehabilitation Services Administration is essential to this mission. We need Congressional recognition and endorsement of the Commissioner of Rehabilitation Services accountability and critical leadership role in that partnership so that people with disabilities receive the services that they deserve.

THE DIVISION FOR EARLY CHILDHOOD
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14 October 1987

Senator Thomas Harkin
United States Senate
Washington, D. C. 20510

Dear Senator Harkin:

The Division for Early Childhood (DEC) of the Council for Exceptional Children (CEC) wants to bring to your attention our concern about the way in which the Department of Education (DOE) has implemented a particular provision of P. L. 99-457. Specifically, Section 623(b), which says:

> The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to handicapped children.

It is our belief, that while the DOE has provided a strong system for technical assistance to state agencies, which we applaud, it has failed to provide adequately for assistance to experimental, demonstration, and outreach programs. Further, we believe that DOE's current implementation of this provision does not fully carry out the will of Congress in this area.

We ask that you consider taking those steps you see as appropriate to determine whether or not the will of Congress has been fully carried out and, if necessary, that you ask DOE to modify its implementation plans to make adequate technical assistance available for experimental, demonstration, and outreach programs.

Relevant Background

Since 1971, a national system of technical assistance has continuously supported the development of experimental, demonstration, and outreach programs funded under Section 623 of the EHA. In June, 1986, the Department of Education decided to discontinue this support altogether. Many strong expressions of protest and concern were voiced at that time from the field, including DEC and CEC (see enclosed letters). CEC included its expression of concern in its testimony before the House Subcommittee on Select Education on S.2294 in July, 1986. The many expressions of concern had two results. First, DOE restored some technical assistance to these programs for an additional year. The second outcome was the addition of Section 623(b) to Section 623 of the EHA. We believe that in adding

Section 623(b) as a part of the amendments to EHA (P. L. 99-457), the Congress clearly intended to assure that assistance to experimental, demonstration, and outreach programs would continue as it had in the past, i.e., at a comparable level.

In May, 1987, the DOE issued RFP 87-053. The purpose of RFP 87-053 was to award a contract for a national early childhood technical assistance center under the authorization of Section 623(b). Concerning assistance to experimental, demonstration, and outreach programs, the RFP stated the following:

> In the past, OSEP's early childhood technical assistance efforts we limited to HCEEP grantees in demonstration or outreach projects, and to HCEEP State Implementation/Planning Grantees. This work scope creates an expanded target audience for technical assistance, and places primary emphasis on providing assistance to State agencies and other appropriate entities within each State. For example, although demonstration and outreach projects are appropriate recipients of technical assistance, the amount of assistance provided to them will depend on the needs of the State or group of States in establishing comprehensive services. For example, certain States may require extensive and immediate technical assistance in establishing mechanisms to coordinate different funding sources, while other States may require extensive assistance in stimulating preservice and inservice training of early intervention personnel. In such instances, most of the technical assistance resources should be aimed at State needs, and other low-cost strategies should be used to address the needs of the demonstration and/or outreach project(s) within those States. While specific decision-rules cannot be articulated in advance of conducting needs assessments, the Center must be able to prioritize needs and commit resources in a manner and proportion that will best accomplish the comprehensive service goals of each State. (Page 3, RFP 87-053).

We take issue with this stated approach to planning assistance for experimental, demonstration, and outreach programs for several reasons:

1. We understand that DOE is to select and fund experimental, demonstration, and outreach programs because they show promise of promoting and strengthening our national capabilities in serving young handicapped children, and are not necessarily tied to a particular state's efforts to provide comprehensive services. These projects are a national resource for all states. Their development is best supported by a technical assistance system that can nurture them as a national resource rather than as part of the state they happen to reside in.

2. We believe that the technical assistance needs of an individual program are not likely to be judged as high priority when compared to the broader needs of a state. We believe these projects' needs would seldom be addressed as part of a state's overall technical assistance plan, and would not be addressed with continuity from one year to the next. Yet, projects need technical assistance to ensure their success and their subsequent value, not only to their own state, but to others.

3. The process of model development, implementation, and evaluation is a complex one. HCEEP projects are further challenged to disseminate their models, secure continuation funding for direct services, and to assist others in model replication. For HCEEP projects, state agencies and their local affiliates are often a source of funding for project activities and services after the expiration of the federal grant period. Requiring that projects reveal their problems and technical assistance needs to state agencies in order to receive help violates the important principles of confidentiality on which meaningful technical assistance is based. The technical assistance relationship between client and consultant should exist without an intermediary, let alone an intermediary which may control funds for the project's future.

4. While we believe that all federally funded efforts should be administered in a cost efficient manner, we do not believe that the low-cost strategies referred to in RFP 87-053 will provide adequate support for the development and operation of experimental, demonstration, and outreach programs. Consequently, the quality and efficiency of these programs will suffer.

5. Finally, we believe that the approach specified in the RFP and subsequent contract does not reflect the intention of Congress that experimental, demonstration, and outreach programs require and should be provided with direct, individualized technical assistance.

In our view, the whole early early childhood program, described under Section 623, represents a continuing federal investment in the development and improvement of services to handicapped infants and preschool-aged children and their families throughout the nation. We feel that adequate technical assistance services are crucial to ensuring the security of that investment. We support DOE's plan for technical assistance to state agencies, but feel strongly that technical assistance to experimental, demonstration, and outreach programs, as currently structured, will not meet their needs and must therefore be amended.

We thank you for your attention and your continuing commitment, and stand ready to provide additional information.

Sincerely,

Corinne W. Garland

Corinne W. Garland
DEC President

CWG/aih
Enclosures

THE COUNCIL FOR EXCEPTIONAL CHILDREN

June 24, 1986

Madeleine C. Will
Assistant Secretary
U.S. Department of Education
Office of Special Education and
Rehabilitative Services
Mary Switzer Building, Room 3006
Washington, D.C. 20202

Dear Madeleine:

Like many others interested in advancing early childhood special education opportunities, The Council for Exceptional Children (CEC) was astounded to learn that the Office of Special Education Programs (OSEP) does not intend to continue the present contract under which technical assistance is provided to HCEEP (Handicapped Children's Early Education Program) demonstration projects. According to Department officials, this will allow limited technical assistance resources to be targeted at the state level. Even if we might agree that this should be the emphasis in the years ahead, we are deeply concerned about the disruption the decision will have on the program, especially grantees, and would strongly urge you and your staff to carefully reexamine this issue.

Technical Assistance an Integral Part of HCEEP

The decision not to continue the present arrangement for providing technical assistance to HCEEP demonstration projects in the absence of an alternative plan leads one to conclude that the Department no longer views technical assistance as an important ingredient of HCEEP. Moreover, the Department has apparently settled on this course of action without any meaningful consultation with the early childhood special education field or the affected grantees themselves. For the reasons set forth below we believe it is essential that the Department continue its commitment to provide technical assistance to HCEEP demonstration projects:

- Technical assistance has been an integral part of HCEEP since 1971 and in the view of many, it has contributed significantly to the success of the demonstration and outreach projects and is among the principal reasons the demonstration projects have achieved an 85 percent continuation rate once federal funds were no longer available.

- The Department's 1985 RFP, covering a 12 month period for comprehensive technical assistance services, included as a part of the work scope HCEEP first, second, and third year demonstration projects as well as HCEEP outreach projects. For reasons not fully clear, the Department, little more than a year later, apparently has reversed itself and would now end technical assistance altogether to these projects.

1920 ASSOCIATION DRIVE ■ RESTON, VIRGINIA 22091 (703) 620-3660

- In authorizing the state early childhood planning, development, and implementation grants in the 1983 amendments to the Education of the Handicapped Act (EHA), Congress recognized the importance of technical assistance to the long term success of this new program and specified that a portion of the funds be used for technical assistance. This action was based, in part, on an acknowledgment of the effectiveness of the technical assistance provided by the Technical Assistance Development System (TADS) to HCEEP.

- The Senate bill (S. 2294) to reauthorize and amend EHA would place in statute for the years ahead an authority for technical assistance to programs of experimental early intervention for both handicapped infants and young children. This is but another reaffirmation of the importance of technical assistance to programs designed to address areas of emerging or unmet needs.

Alternative Plan Needed

We would not want you or your staff to interpret our comments as an affirmation of the status quo; we have always felt it was the responsibility of the Administration to continually strive to improve the programs which it administers. In this particular instance, however, the timing of the decision and the lack of an alternative approach to providing technical assistance to approximately 70 HCEEP demonstration projects would not appear to be in the best interests of HCEEP or individual grantees and is unduly unfair to TADS who, from almost all accounts, has an exemplary record during the time it has provided technical assistance to HCEEP.

In addition, the absence of another means of providing technical assistance to the HCEEP demonstration projects raises questions about the apparent redirection of an estimated $500,000 available for this activity this year. Even with the 4.3 percent reduction under the terms of Gramm-Rudman-Hollings, HCEEP is some $470,000 above last years funding level. It would, thus, appear that sufficient funding is available to continue some form of technical assistance to these projects.

We realize the Department has devoted substantial attention to the area of early childhood education and has most recently been studying how best to fashion and organize future programs and services to handicapped infants and young children. With respect to enhancing technical assistance, the Department's National Task Force of the Future of Early Childhood Education recommended the following:

> Technical Assistance. Although some of the technical assistance in the future would be handled through the coordination and brokering which results from the federal monitoring effort, there

> is an ongoing need for a national technical assistance effort such as that now provided by TADS and START.

In closing, we believe there is substantial evidence supporting the need to continue to make technical assistance available to those conducting three-year HCEEP model demonstration projects to enhance the effectiveness of these projects. In view of this as well as the need to avoid any further disruptions among grantees and at TADS, we urge that this issue be reconsidered.

If we can be of further assistance in providing additional information to you or if we can answer any questions that you or your staff members may have, please do not hesitate to contact us.

Sincerely,

Fred Weintraub

Joe Ballard

Frederick J. Weintraub
Assistant Executive Director
Department of Governmental Relations

B. Joseph Ballard
Associate Director
Department of Governmental Relations

FJW/BJB/ymb

cc: Patricia Guard
Tom Behrens
Tom Finch

THE DIVISION FOR EARLY CHILDHOOD

June 26, 1986

Ms. Madeline Will
Assistant Secretary for Special Education
   and Rehabilitative Services
U. S. Department of Education
400 Maryland Avenue, S. W.
Mary Switzer Building
Washington, D.C. 20202

Dear Ms. Will:

I am writing on behalf of the Council for Exceptional Children (CEC)/Division for Early Childhood (DEC) to express our concern about the intention of the Office of Special Education Programs (OSEP) to discontinue technical assistance to demonstration projects funded through the Handicapped Children's Early Education Program (HCEEP). DEC is a national organization of over 4000 parents and professionals from many disciplines who are concerned about infants and young children with special needs and their families. We know from past experience that technical assistance is an effective method of working with projects to insure quality services which can then be replicated by others. We therefore urge you to reconsider this decision.

DEC has provided past evidence of support for the concept of technical assistance to HCEEP projects. We recently provided testimony to Senator Lowell Weicker and the Senate Subcommittee on the Handicapped regarding the development of Senate bill 2294. In that testimony a recommendation was made to continue and enhance federal programs which support the training of early intervention personnel and which provide technical assistance. We support Section 633 of that bill which expands the provision for technical assistance to other program components of HCEEP. Additionally, DEC has also supported technical assistance in a position paper submitted to Patty Guard at her request entitled "The Future of Outreach" stating that technical assistance would strengthen the quality of outreach, especially during the initial year of a project.

Our support for technical assistance is founded on the belief that it has contributed and continues to contribute to the national mission of HCEEP. Technical assistance has significantly effected the success and the quality of individual demonstration projects over the years. It has provided a systematic approach to the improvement and enrichment of programs supported by federal dollars.

The advantages of technical assistance are numerous. It provides projects with:

-solutions to problems, thereby saving time and effort on the part of individual projects.

-information about the most current and effective early intervention research and programming.

-resources and services which aid projects in their goal to be replicable.

-linkages for the developoment of professional networks at state and national levels, such as INTERACT and the HCEEP Rural Network. These groups continue to provide leadership for expanding and improving services.

-support for the development of special interest groups, such as those interested in transition of children into public schools, single adolescent mothers, parent involvement, and microcomputer uses. Spin-offs from these group activities have included conferences, publications and ongoing information exchanges.

Because of the substantial evidence of the advantages of technical assistance and because of the very fine results achieved with projects in the past, we again urge you to reconsider this decision. It is our understanding that there is currently no alternative plan for providing technical assistance to demonstration projects. This lack of technical assistance may serve to be counter-productive to the goals of HCEEP and future progress in expanding quality services. We agree with the Council for Exceptional Children's (CEC) remarks in their letter of June 24, 986. Technical assistance is an integral part of the HCEEP network and OSEP should maintain its commitment to provide it to projects.

As you are aware, DEC has maintained communications with Patty Guard and others through the use of regular conference calls during the past year. We see this activity as an invaluable method for discussing current and future trends and directions in the field. We certainly would welcome the opportunity for this and other such issues to be discussed during those calls or at other appropriate times. As discussed previously, this method allows DEC to provide input prior to decision-making rather than in a reactive mode. We would welcome the opportunity to further discuss the needs for technical assistance with you.

In conclusion, we ask that technical assistance continue to be made available in its current form to demonstration projects and hope that you will consider this request. We also extend our assistance and ask that you contact us if you are in need of further input from the members whom we represent.

Sincerely,

Amy L. Toole

Amy L. Toole
President
2 Bay Club Drive
Apt. 10Y
Bayside, New York 11360

(718) 428-3789 (Home)
(516) 467-3510 (Work)

ALT:dh
cc: Senator Lowell P. Weicker

bcc: Lisbeth Vincent
Shirley Z tlin
Barbara Smith
Tal Black

The National Rehabilitation Counseling Association

633 South Washington Street
Alexandria, Virginia 22314
(703) 836-7677

October 12, 1987

The Honorable Tom Harkin
Chairman
Senate Subcommittee on the Handicapped
Washington, DC 20510

WRITTEN TESTIMONY FOR OVERSIGHT HEARING ON THE IMPLEMENTATION OF THE REHABILITATION ACT AMENDMENTS OF 1986 (P.L. 99-506)

Thank you for the opportunity to submit written testimony to the Subcommittee on the Handicapped as it relates to the oversight hearing on the implementation of the Rehabilitation Act Amendments of 1986 (P.L. 99-506).

The National Rehabilitation Counseling Association (NRCA) is the largest professional association of rehabilitation counselors in the nation. Our membership represents those professionals who work directly with individuals having a variety of physical and mental disabilities. Our membership has always worked in a close partnership with handicapped persons toward the goals of employment and self-sufficiency, closely following the mandate of the Rehabilitation Act and its amendments. This very same Act sets clear mandates for the administration of all programs under the Act and the NRCA strongly supports these mandates.

We feel, however, that the legal intent and the implementation of this vital law as it relates to the Rehabilitation Services Administration (RSA) is not being carried out in a legal or meaningful manner. This is most likely due to inappropriate management practices and policies being implemented by the Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS).

During the past several years Rehabilitation Counselors in the field have met with increased roadblocks which have impeded their ability to perform their rehabilitation functions and to keep up with the most current activities called for by the latest Rehabilitation Act amendments such as the new technologies and supported work activities to name but a few. These barriers can be attributed to the management/policy procedures at the OSERS level. Some of the major issues include the following:

The Assistant Secretary of OSERS appears to have usurped the legal authority granted to the Commissioner of RSA which has resulted in the erosion of RSA's ability to carry out its basic functions such as hiring and firing of RSA personnel; the appointment of OSERS' task forces to reorganize the RSA; a lack of sufficient staff to implement the law and the provision of needed technical assistance to persons in the field to enhance and upgrade services to clients with disabilities.

In addition, OSERS has provided incorrect, misleading and conflicting statements to the Congress regarding the need for "qualified rehabilitation personnel" in state rehabilitation agencies, and the need to provide adequate funding to train state agency personnel. This training is vital if rehabilitation counselors are to keep with the latest techniques and implement current research findings as they affect populations such as traumatic brain injured, learning disabled, chronically mentally ill, developmentally disabled and those with severe disabilities in general.

It is easy to understand why some progress along these lines has been curtailed or disrupted. In the past six years a large number of experienced RSA staff has left and to this date has not been fully replaced. This has occurred at the same time that additional funds and new programs have been mandated by the legislation.

In order to get RSA back on track, we urge the immediate restoration of the authority of the current RSA Commissioner, who was duly appointed by the President of the United States. The NRCA membership has full confidence in the Commissioner to direct this important national program and we hope that he be given the opportunity to exert the power given him by law. We fully understand that with responsible leadership along with a cooperative spirit of the Administration and experts and consumers from the States the job of rehabilitation can be done and done well.

In summary, it should be noted that these comments are written out of a sense of frustration over the situation that impacts on those persons whom we are committed to serve-persons with disabilities. It is imperative therefore, that all parties join in a cooperative effort to carry out the mandates of the Rehabilitation Act and its amendments so that persons with handicaps are provided with an array of quality services they so desperately need. These services would assist these persons to take their rightful place in the mainstream of our society.

We further urge that necessary action be taken to stop the fragmentation and discord that exists among the Federal-State partners and address the serious issues that impact on citizens with disabilities, such as the need to realistically define "qualified Rehabilitation Counselor," better utilization of new technological advances, in-service training and pre-service training for Rehabilitation Counselors and a fully staffed RSA with knowledgeable persons and those experienced in the field of vocational rehabilitation. We feel that persons with disabilities deserve the best in personnel and services and good leadership must start at the top with RSA. Presently, RSA has an excellent leader and advocate for citizens with disabilities and we have full confidence in Commissioner Justin Dart, Jr. to direct this vital program.

The National Rehabilitation Counseling Association appreciates your consideration of our views in this urgent matter and hope that you will call upon us for any assistance we may provide. The Subcommittee on the Handicapped is to be congratulated for its diligence and guidance in issues of rehabilitation of persons with disabilities.

Susan Magruder, CRC
President
National Rehabilitation Counseling Association

LEGISLATIVE COALITION FOR THERAPEUTIC RECREATION

October 5, 1987

Robert Silverstein
Staff Director
Senate Subcommittee on the
Handicapped
113 Hart Office Building
Washington, D.C. 20510

Dear Mr. Silverstein:

On behalf of the National Therapeutic Recreation Society, the American Therapeutic Recreation Association, and the National Consortium on Physical Education and Recreation for the Handicapped I would like to provide you with comments pertaining to the EHA and Rehabilitation oversight hearings the Senate Subcommittee on the Handicapped is having this week. These three organizations represent therapeutic recreation specialists who use recreation as a rehabilitative, educational and community living service with disabled individuals. We are pleased that the Subcommittee is conducting this hearing in an effort to ensure compliance with Congressional intent relative to the 1986 amendments to the Education for the Handicapped Act and the Rehabilitation Act.

We have three main concerns, as follows.

Monitoring of Related Services. The Department of Education has only recently begun to monitor related services within the overall scope of education for handicapped children and youth. Data on related services have only been collected for one year. It is essential that the Office of Management and Budget approves the form used by the Department of Education and that this important and necessary information continues to be collected. Obviously, without such information it is impossible to make sound judgements about the level of need for these services, the actual and anticipated costs for related services, and the overall extent to which SEA's and LEA's are meeting the related educational needs of our Nation's children and youth. Specifically, the Department of Education needs to be pressed to compile information on physical education and recreation services provided to children and youth as part of their free and appropriate education.

RSA Regulatory and Policy Revisions. In December, 1986, Commissioner Dart held hearings to solicit input on the changes that are made necessary by the 1986 amendments to the Rehabilitation Act. The LEGISLATIVE COALITION FOR THERAPEUTIC RECREATION submitted a number of recommendations and has offered to provide technical assistance in making the necessary changes. We have no knowledge of RSA's intentions or attempts to utilize such input. Therefore, we urge the Subcommittee to inquire about the efforts being made to make appropriate changes to regulations, particularly as they pertain to physical education and recreation training, research and service.

Section 316 Special Recreation Projects. The 1986 amendments to the Rehabilitation Act included statutory changes to Section 316, including extending these projects to three year cycles. This is certainly a welcomed change yet it will require some adjustments to the administration of projects. To our knowledge there have been no new approaches for reviewing, awarding and continuing grants each year. Again, the COALITION has submitted to RSA recommendations and has offered to assist in determining fair and reasonable guidelines that would preserve the integrity of Congressional intent. We are very concerned about these administrative problems and urge the Subcommittee to press for adjustments to regulations for this important authorization.

At the "Disability Policy" Conference in May Senator Harkin, as the new Chairman of the Senate Subcommittee on the Handicapped, delivered a most inspiring and encouraging address wherein he reaffirmed the Subcommittee's commitment to advancing the independence, productivity and community integration of individuals with disabilities. In 1986 Congress recognized the importance of physical education and recreation services to these goals. We look forward to working with the Subcommittee to actualize the statutory supports for physical education and recreation as a part of education, rehabilitation and independent living services for individuals with disabilities, and we thank you for this opportunity to provide this input.

Sincerely,

John W Shank

John W. Shank, Ed.D.
NTRS Representative to the
LEGISLATIVE COALITION FOR THERAPEUTIC RECREATION

cc Dr. Michael Churton, NCPERH Representative
Ms. Karin Vecchione, ATRA Representative

LEGISLATIVE COALITION FOR THERAPEUTIC RECREATION

The purpose of the LEGISLATIVE COALITION FOR THERAPEUTIC RECREATION is to monitor legislative and regulatory matters pertaining to therapeutic recreation and recreation services for individuals with special needs. The COALITION collaborates with public affairs offices and legislative action committees of its constituent organizations on related public policy and membership education, information and action. The COALITION represents various professional organizations* committed to promoting and protecting the role of recreation in the treatment, education and community living of individuals with illnesses, disabilities, or other handicapping conditions. The COALITION strives to ensure a consolidated and consistent approach to working with Congressional committees and federal agencies on behalf of the interests and concerns of member organizations and the public it serves.

* The National Therapeutic Recreation Society (NTRS) is the professional branch of the National Recreation and Park Association dedicated to improving and expanding opportunities for individuals with disabilities to experience personal development and fulfillment and functional improvement through recreation and leisure.

The American Therapeutic Recreation Association (ATRA) is a non-profit professional organization committed to advancing the role of therapeutic recreation as an effective and efficient component of rehabilitation, habilitation, education and medical treatment of clients in health care and human service settings.

The National Consortium on Physical Education and Recreation for the Handicapped (NCPERH) consists of professionals in the fields of adaptive physical education and therapeutic recreation involved in promoting and stimulating programs and services, and conducting professional training and research and the dissemination of public information related to the physical education and recreation needs of our Nation's 4.3 million disabled children and youth.

Address correspondence to:

John Shank, Ed.D.
316G Seltzer Hall
Temple University
Philadelphia, PA 19122
(215) 787-6278

Consortium for
Citizens with
Developmental
Disabilities

for more information
contact:
Barbara Hanft, AOTA
202/948-9626
Celane McWhorter, TASH
703/683-5586

October 20, 1987

The Honorable Thomas Harkin
Chair, Senate Subcommittee on the Handicapped
United States Senate
Washington, DC 20510

Dear Senator Harkin:

On behalf of the following organizations, the Education Task Force of the Consortium for Citizens with Developmental Disabilities (the CCDD) wishes to submit the attached document to be considered as testimony for the October 8 Oversight Hearing. We appreciate your consideration of our concerns and look forward to working with you on these issues in the future.

Sincerely,

American Association of University Affiliated Programs
American Occupational Therapy Association
Association for Retarded Citizens
Autism Society of America
Epilepsy Foundation of America
National Association of Protection and Advocacy Systems
National Education Association
National Mental Health Association
National Theraputic Recreation Society
The Association for Persons with Severe Handicaps
United Cerebral Palsy Associations, Inc.

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Consortium for
Citizens with
Developmental
Disabilities

for more information
contact:
Barbara Hanft, AOTA
202/948-9626
Celane McWhorter, TASH
703/683-5586

The Education Task Force of the Consortium for Citizens with Developmental Disabilities (the CCDD) is pleased to have the opportunity to convey our views regarding the implementation of the Education of the Handicapped Amendments of 1986 (P.L. 99-457) and the Handicapped Children's Protection Act of 1986 (P.L. 99-372). The CCDD Education Task Force consists of national groups representing parents, professionals, private providers, state agencies, and advocacy groups, all of whom are vitally interested in ensuring that children and youth receive the special education and related services mandated by P.L. 94-142.

First, we wish to extend our appreciation to the members of Congress and the Senate Subcommittee on the Handicapped, in particular, for passing P.L. 99-457 and P.L. 99-372. The Education of the Handicapped Act Amendments of 1986 is the most important piece of federal legislation affecting special education since the passage of P.L. 94-142 in 1975. It clearly addresses previously unmet needs of children with handicaps by creating two new initiatives: (1) Part H, the early intervention program for infants and toddlers; and (2) the extension on Part B services and rights to children, 3 - 5 years. The Handicapped Children's Protection Act of 1986 rightfully restores civil rights protection to parents of children with handicaps which is accorded all other groups across the nation.

The organizations listed below offer the following recommendations for your consideration as we join you in following the implementation of these two monumental laws. Our comments will take the form of identifying issues for continued follow-up and careful observation as states and communities implement these laws.

PART H, HANDICAPPED INFANTS AND TODDLERS

1. Appropriation: We applaud the Congress for appropriating start-up funds for this program. We have grave concerns that the Administration requested rescissions for FY 87 and zero for FY 88. It is imperative for Congress and the disability community to continue to monitor OSERS implementation. Federal funds for Part H are intended to complement state, local, and private payment for services. It is vital to continue appropriations of

Part H at the full authorized levels through 1988. Some states have conditioned their participation in Part H on full funding from the Congress. For example, money at the authorized amount for services under Part H will not be available to infants in California. Since the authorized amounts after 1988 are "such sums," we feel a close examination by this Committee will be essential to determine what sums are realistically needed to allow for full implementation of the law. Adequate funding will ensure that all 50 states will continue their partnership with the federal government in providing early intervention services and will promote continuity of services from state to state.

2. Funding Formula: Close scrutiny should be given to ensuring that all eligible infants and toddlers with handicaps and their families receive early intervention services. Given the flexibility the legislation has given the states in establishing their own definitions of eligibility, there is a danger that states may interpret the statutory definition in such a way as to exclude children clearly in need of early intervention services. The current funding formula allocates funds to states, regardless of the number of children served. If it becomes apparent that all eligible children are not receiving services, then reconsideration of this issue may need to be addressed in oversight hearings.

3. Training of qualified personnel: Quality programs that will enhance a child's development and support families are dependent on knowledgeable, experienced, and well-trained staff to deliver services. This requires not only that personnel are adequately prepared in their respective professional fields, and meet the highest state regulations for certificates of license, but that they receive on-going continuing education in the field of early intervention, with particular focus on working with families as a member of an interdisciplinary team in a multi-agency system. This is an essential ingredient to successful services and should be of continued interest to the Congress.

4. Comprehensive Services: The Department of Education should be applauded and encouraged in their efforts to develop, research, and disseminate model programs and services since there is not yet a national consensus on the state of the art in early intervention. There has been much public debate regarding the role of education and medical services in the special education of children with handicaps under Part B of this Act. P.L. 99-457 essentially clarified this debate by defining a multi-agency system of health, education, and social service agencies, with no one service tied to any other. It is vital that Congress continue oversight on this issue to ensure that truly comprehensive services are delivered to children and their families.

5. Family Involvement: Congress created a system that delivers services not only to children who are delayed, but also to their families. The focus on families is obvious in: (1) the Individualized Family Service Plan (IFSP), (2) the inclusion of

family counseling and support in the definition of early intervention services, and (3) the reservation of three positions on the Early Intervention Coordinating Councils for parents. Parents also have the opportunity to participate in development of state plan via public comment provisions. However, the procedural safeguards for families are not clearly defined in the Act. The way in which the system will guarantee families' rights when various public and private agencies provide early intervention services is not clear. It will be imperative during the next five years to carefully follow the manner in which states address due process rights.

6. Access to services: Family involvement, minimal due process rights, multi-agency systems, and child find requirements convey a sense that access to services for infants, young children, and their families was important to members of Congress, as well as the disability community, in formulating the law. As the states have begun to implement P.L. 99-457, important questions regarding access to services have arisen. Where services are to be delivered, in the home, day care, or treatment center, requires an exploration of how least restrictive environment (LRE) provisions apply to the birth to 2 population.

Third party payments, as well as continued financial contributions by all public and private agencies currently providing early intervention services, also have an impact on access to services. Although provisions in the law prohibit federal and state agencies from withdrawing funds, payment by private third party payors for early intervention services cannot be regulated by federal law. There have been numerous reports in the past from families who have been denied claims for health services since the third party payer has determined they are no longer responsible for services provided in the school system under P.L. 94-142. Moreover, many health maintenance organizations (HMOs) have not addressed long-term care or rehabilitative care for their enrollees. Lack of payment and limited coverage by third party payors may restrict access to services by some middle-class families fortunate to have health insurance but not eligible for federal/state funded early intervention services which are based on income.

SECTION 619

We commend the Congress for extending the P.L. 94-142 mandate to the population of children who are 3 to 5 years of age and for providing a funding formula that enables states to effectively develop pre-school programs. The Congress must be very aware of the continued need for new, increased funding levels for these children. Funding for these programs will continue to be the keystone to their success after 1990(91).

One of the overriding concerns with Section 619 is the interpretation of LRE for this population. It is very important that the programs in their early stages provide age-appropriate services in integrated settings. In most states, preschoolers with handicaps may be the only children in this age range who receive publicly funded pre-school services. The major question will be how to guarantee LRE services. How will the states provide service for these children with their peers who are not handicapped in an age appropriate setting when there may be no such established setting in the state. Even though this may be logistically difficult, states must guard against the establishment of an inappropriate segregated system. Each state will be addressing this in their state plan, and we urge the Subcommittee to monitor these proceedings very carefully.

DISCRETIONARY PROGRAMS

While the early childhood provisions received the lion's share of the attention in last year's reauthorization, there were many laudable improvements in Parts C through G of this Act which we want to recognize.

By establishing in the new Section 624 a clear authority for severe handicaps, the Congress preserved the integrity of some important research, demonstration, and in-service programs for children with the more severe impairments. The additional changes in 624 which replaced broad authority under the old auxiliary section with a clarification of allowable activities within each section has made the discretionary programs affected by the change easier to understand and implement.

Changes in Section 631 strengthened the parent training authority by allowing these services to be extended to professionals who work with parents. The parent training centers provide an important link between parents and professionals. This change was an important step in strengthening that link.

The legislation also provided new or improved authorities in personnel development through the additional clearinghouse in Section 633, captioned film, educational media, and technology in Section 652 and 661.

ATTORNEYS' FEES

We again wish to thank Congress for enacting this important legislation and overturning SMITH V. ROBINSON. A year of working with the new law has convinced us of the wisdom of your decisions in shaping that law. It is accomplishing its purposes in allowing parents a better chance to exercise their procedural rights in order to obtain a free appropriate public education for their children. Further, school districts' knowledge that a hearing officer's or court's finding that they have denied a free appropriate education to a child will result in their paying for the parent's attorney fees has tended to make those districts more amenable to addressing the parents' claims more quickly and seriously. In addition, this has thus meant that the potential of a fee award -- and in particular the potential of an award for prevailing at the due process hearing stage -- has actually resulted in more disputes getting resolved at an early stage without the need to resort to hearings or law suits.

We strongly concur with the oral testimony of October 8 presented by Reed Martin of Advocacy, Inc. and were very pleased to hear the Subcommittee concur with his understanding of what Congress clearly intended in enacting this law. As he said, that intent has generally been understood by districts and most courts, but there has been some needless litigation resulting from misinterpretation of that intent by some districts. We believe this to be an issue that the Subcommittee should continue to monitor.

Conclusion

P.L. 99-457 brought major changes for the lives of infants, children, and youth, all very exciting for those of us who are a part of the disability community. We believe these hearings have provided a valuable tool for focusing attention on the importance of these programs. We are very supportive of this endeavor. However, we wish also to point out the importance of continuing interest in this Act, both within the confines of P.L. 99-457 and beyond these changes to implementation of the total Act.

There are a number of newly emerging issues addressed in this testimony that we feel will need more exhaustive overview by this Subcommittee once the service delivery systems have been in place. Beyond P.L. 99-457 there are implementation issues such as LRE that the Congress should also examine closely. We close with a request for another set of Subcommittee oversight hearings specific only to the Education of the Handicapped Act with a more thorough and in-depth examination of all the EHA issues.

American Association for
Counseling and Development
5999 Stevenson Avenue, Alexandria, Virginia 22304 703/823-9800

Serving the counseling, guidance and human development professions since 1952

October 29, 1987

The Honorable Tom Harkin
U.S. Senate
Washington, D.C. 20510

Dear Senator Harkin:

I have enclosed comments from the American Rehabilitation Counseling Association to be included in the record of the oversight hearings held on October 8 regarding the Rehabilitation Act Amendments of 1986.

The American Rehabilitation Counseling Association, a division of the American Association for Counseling and Development, represents over 3,000 professional counselors working in the field of rehabilitation services and counselor education. We applaud your leadership as Chairman of the Subcommittee on the Handicapped on rehabilitation issues for our nation's disabled individuals.

Thank you for including our comments in the record.

Very sincerely,

Lori Rogovin

Lori Rogovin
Government Relations Specialist

enc.

American Association for
Counseling and Development
5999 Stevenson Avenue, Alexandria, Virginia 22304 703/823-9800

Serving the counseling,
guidance and human
development professions
since 1952.

STATEMENT OF THE
AMERICAN REHABILITATION COUNSELING ASSOCIATION
(A DIVISION OF THE AMERICAN ASSOCIATION FOR COUNSELING AND DEVELOPMENT)
ON THE IMPLEMENTATION OF THE REHABILITATION ACT AMENDMENTS OF 1986

FOR THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

OCTOBER 8, 1987

WASHINGTON, D.C.

American Association for Counseling and Development is Committed to Equal Opportunity.

THE AMERICAN REHABILITATION COUNSELING ASSOCIATION APPRECIATES THE OPPORTUNITY TO SUBMIT WRITTEN COMMENTS TO THE SUBCOMMITTEE ON THE HANDICAPPED REGARDING THE OCTOBER OVERSIGHT HEARING ON THE IMPLEMENTATION OF THE REHABILITATION ACT AMENDMENTS OF 1986--PL 99-506.

THE AMERICAN REHABILITATION COUNSELING ASSOCIATION (ARCA), ONE OF FIFTEEN DIVISIONS OF THE AMERICAN ASSOCIATION FOR COUNSELING AND DEVELOPMENT, REPRESENTS MORE THAN 3,000 PROFESSIONAL COUNSELORS WORKING IN THE FIELD OF REHABILITATION SERVICES AND COUNSELOR EDUCATION. IN KEEPING WITH ITS PRIMARY MISSION OF HELPING THE PROFESSION OF REHABILITATION COUNSELING TO BETTER SERVE DISABLED INDIVIDUALS, ARCA ADVOCATES FOR SERVICES AND PROGRAMS WHICH ENHANCE THE POTENTIAL AND OPTIONS AVAILABLE FOR PERSONS WITH DISABILITIES.

ARCA APPLAUDS THE STRIDES THAT CONTINUE TO BE MADE IN THE AREA OF REHABILITATION SERVICES FOR DISABLED INDIVIDUALS. WE COMMEND THE MEMBERS OF THE SUBCOMMITTEE ON THE HANDICAPPED FOR THEIR LEADERSHIP IN SECURING THE PASSAGE OF IMPORTANT AND NECESSARY AMENDMENTS TO THE REHABILITATION ACT LAST YEAR.

THROUGHOUT THE REHABILITATION ACT REAUTHORIZATION PROCESS, ARCA WORKED CLOSELY WITH BOTH THE SENATE AND HOUSE IN ACHIEVING MANY CHANGES IN THE FEDERAL REHABILITATION PROGRAM. WE ARE PLEASED THAT MANY OF OUR CONCERNS--INCLUDING INDIVIDUALIZED WRITTEN REHABILITATION PLANS AND SUPPORTED EMPLOYMENT PROGRAMS--WERE ADDRESSED AT THAT TIME.

NOW THAT THE 1986 AMENDMENTS TO THE REHABILITATION ACT OF 1973 HAVE BEEN ENACTED, ARCA HAS SOME CONCERNS REGARDING IMPLEMENTATION OF THE AMENDMENTS AT THE FEDERAL, STATE AND LOCAL LEVELS IN ACCORDANCE WITH THE INTENT OF CONGRESS.

FIRST, ARCA IS CONCERNED ABOUT THE QUALITY OF PERSONNEL SERVING DISABLED INDIVIDUALS. WE STRONGLY BELIEVE THAT AGENCIES WHICH PROVIDE SERVICES AUTHORIZED UNDER THE REHABILITATION ACT SHOULD HIRE INDIVIDUALS AS REHABILITATION COUNSELORS WHO POSSESS THE EDUCATIONAL TRAINING FOR THE POSITION. ALTHOUGH THE LEGISLATION CALLS FOR "PERSONNEL SPECIFICALLY TRAINED TO IDENTIFY, ASSESS AND MEET THE INDIVIDUAL REHABILITATION NEEDS OF INDIVIDUALS WITH SEVERE HANDICAPS", IT HAS COME TO OUR ATTENTION THAT THIS IS NOT ALWAYS THE CASE. SERVICES TO PERSONS WITH DISABILITIES ARE FREQUENTLY LEFT TO INDIVIDUALS WHOSE ONLY CREDENTIAL IS A PASSING MARK ON A CIVIL SERVICE EXAM OR THE FULFILLMENT OF AN UNRELATED BUREAUCRATIC REQUIREMENT. THESE INDIVIDUALS CLEARLY LACK THE EDUCATIONAL BACKGROUND NECESSARY TO FULFILL THE JOB. ARCA BELIEVES THAT IN ORDER TO ENSURE THE PROVISION OF QUALITY REHABILITATION SERVICES TO DISABLED INDIVIDUALS, QUALIFIED PERSONNEL MUST HAVE THE APPROPRIATE EDUCATIONAL TRAINING FROM A COUNCIL ON REHABILITATION EDUCATION (CORE) ACCREDITED PROGRAM. FURTHERMORE, THEY MUST MEET STATE CERTIFICATION OR LICENSING, OR NATIONAL PROFESSIONAL CERTIFICATION REQUIREMENTS, SPECIFICALLY FOR THE CERTIFIED REHABILITATION COUNSELOR. THE SERVICE TO PERSONS WITH DISABILITIES PROVIDED BY REHABILIATION COUNSELORS IS A PROFESSIONAL ONE REQUIRING SPECIFIC KNOWLEDGE, COMPLEX SKILLS AND TREMENDOUS COMMITMENT. ARCA BELIEVES THAT THESE EDUCATION AND TRAINING REQUIREMENTS NEED TO BE IMPLEMENTED ON STATE AND LOCAL LEVELS TO ENSURE THE APPROPRIATE TREATMENT, COUNSELING, AND CARE FOR PERSONS WITH DISABILITIES.

THE SECOND CONCERN TO ARCA IS THE POTENTIAL UNDERMINING AND NEGLECT OF SERVICES MANDATED UNDER THE REHABILITATION ACT BECAUSE OF DISAGREEMENTS AND CONTROVERSY AMONG ADMINISTRATORS AT FEDERAL AND STATE LEVELS. IT IS OUR HOPE THAT THE OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, THE REHABILITATION SERVICES ADMINISTRATION, AND THE OFFICE OF SPECIAL EDUCATION PROGRAMS CAN IRON OUT ANY DIFFERENCES THAT MAY INHIBIT THE IMPLEMENTATION OF THE REHABILITATION ACT AMENDMENTS FOR THE MILLIONS OF INDIVIDUALS WHO RELY ON THESE SERVICES FOR ACCESS TO THE NECESSITIES AND JOYS OF LIFE.

THE AMERICAN REHABILITATION COUNSELING ASSOCIATION APPRECIATES YOUR CONSIDERATION OF THESE COMMENTS AND COMMENDS THE SUBCOMMITTEE FOR ITS COMMITMENT TO THE REHABILITION NEEDS OF OUR NATION'S DISABLED INDIVIDUALS. WE WELCOME YOU TO CALL UPON US FOR ANY ASSISTANCE YOU MAY NEED.

Mr. Silverstein. Are there any other comments before we bring the hearing to a close?

[No response.]

Mr. Silverstein. Thank you all very much. The hearing is adjourned.

[Whereupon, at 1:00 o'clock p.m., the subcommittee was adjourned.]

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